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THE GENERAL STATUTES OF NORTH CAROLINA

CONTAINING GENERAL LAWS OF NORTH CAROLINA THROUGH
THE SESSION LAWS OF 1977, CHAPTER 1131

Prepared under the Supervision of the Department of Justice
of the State of North Carolina

**Annotated under the Supervision of the Department of Justice,
by the Editorial Staff of the Publishers**

UNDER THE DIRECTION OF
W. M. WILLSON, J. H. VAUGHAN, SYLVIA FAULKNER
AND E. E. PINCUS

Volume 3C

1978 Replacement Volume

THE MICHIE COMPANY
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1978

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Scope of Volume

Statutes:

Full text of Chapters 137 through 156 of the General Statutes of North Carolina, including all enactments through the Session Laws of 1977, Chapter 1131, heretofore contained in 1974 Replacement Volume 3C of the General Statutes of North Carolina and the 1977 Cumulative Supplement.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports volumes 1-292 (p. 643).
North Carolina Court of Appeals Reports volumes 1-33 (p. 240).
Federal Reporter volumes 1-300.
Federal Reporter 2nd Series volumes 1-554 (p. 1074).
Federal Supplement volumes 1-431 (p. 434).
Federal Rules Decisions volumes 56 (p. 663)-74 (p. 213).
United States Reports volumes 1-419 (p. 984).
Supreme Court Reporter volumes 1-97 (p. 2204).
North Carolina Law Review volumes 1-55 (pp. 1-750).
Wake Forest Intramural Law Review volumes 2-13 (p. 269.)
Duke Law Journal volumes 3 (p. 485)-6 (p. 1395).
North Carolina Central Law Journal volume 2 (pp. 1-164), volume 3 (pp. 123-268), volume 7 (pp. 201-413), volume 8 (pp. 1-122).
Opinions of the Attorney General.

Abbreviations

(The abbreviations below are those found in the General Statutes which refer to prior codes.)

P. R.	Potter's Revisal (1821, 1827)
R. S.	Revised Statutes (1837)
R. C.	Revised Code (1854)
C. C. P.	Code of Civil Procedure (1868)
Code	Code (1883)
Rev.	Revisal of 1905
C. S.	Consolidated Statutes (1919, 1924)

Preface

Replacement Volume 3C, published in 1974, accumulated supplements exceeding the bound volume in size. This 1977 replacement volume is issued to incorporate the new material in the bound volume and to eliminate what is obsolete.

Beginning with formal opinions issued by the North Carolina Attorney General on July 1, 1969, such opinions which construe a specific statute will be cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The recompiled volume has been prepared and published under the supervision of the Department of Justice of the State of North Carolina. The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes, and any suggestions they may have for improving them, to the Department.

RUFUS L. EDMISTEN
Attorney General

March 1, 1977

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Rufus L. Edmisten
Attorney General

March 1, 1977

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State Rural Rehabilitation Law.

§§ 137-1 to 137-30: Repealed by Session Laws 1955, c. 190.

ARTICLE 2.

North Carolina Rural Rehabilitation Corporation.

§ 137-31. Designated a State agency. — The North Carolina Rural Rehabilitation Corporation, a nonprofit corporation, organized by the members of the commission of the North Carolina Emergency Relief Administration, and chartered by the State to serve as a social and financial instrumentality in assisting to rehabilitate individuals and families by enabling them to secure subsistence and gainful employment from the soil and coordinated and other enterprises in order to restore them as self-sustaining citizens and thereby reduce the burden of public relief for the needy and unemployed, is hereby recognized and designated as an agency of the State of North Carolina and of the North Carolina Emergency Relief Administration and its successor within the powers and limitations of its charter for the carrying out of said objects and purposes. (1935, c. 314, s. 1.)

State Government Reorganization. — The Rural Rehabilitation Corporation was transferred to the Department of Agriculture by § 143A-63, enacted by Session Laws 1971, c. 864.

§ 137-31.1. State agency and its rights, functions, etc., continued. — The North Carolina Rural Rehabilitation Corporation shall be and continue as an agency of the State of North Carolina, and as such is vested with and shall continue to have and be vested with all the rights, powers, functions, objects and purposes granted to and vested in it by the certificate of incorporation of said Corporation, as amended, or by statute or act of the General Assembly of North Carolina. (1953, c. 724, s. 1.)

§ 137-31.2. Property of Corporation. — All lands, buildings, structures, funds, notes, bonds, mortgages, contracts, records, reports, equipment, vehicles, supplies, materials and other property, real, personal or mixed, tangible or intangible, which are owned by said Corporation or in which said Corporation has an interest on April 8, 1953, shall continue and remain the property of said Corporation. (1953, c. 724, s. 2.)

§ 137-31.3. Members of board of directors; terms of office; per diem and expenses. — The governing body of the North Carolina Rural Rehabilitation Corporation shall be a board of directors consisting of nine members, of whom the Commissioner of Agriculture, the Director of the Cooperative Agricultural Extension Service of the North Carolina State College of Agriculture and Engineering of the University of North Carolina, the Secretary of Human Resources, and the North Carolina State Director of the Farmers Home Administration of the United States Department of Agriculture, or in the event of a change of name of any of said offices, the persons performing the principal duties of said offices, by whatever name called, shall be ex officio members, and the remaining five members shall be named by the Governor of North Carolina. Of the five directors first named by the Governor, one shall be appointed for a term of one year, two shall be appointed for terms of two years each and two for terms of three years each, and subsequent appointments shall be made for terms of three years each. The members of the board appointed by the Governor shall be entitled to receive from the funds of the corporation, while attending meetings of the board and of committees appointed or authorized by the board and while performing other services for the Corporation, a per diem of ten dollars ($10.00) and reimbursement for such actual necessary expenses as may be incurred in travel and subsistence, not in excess of that allowed by the General Assembly for other State agencies, but while a member is serving as an officer of the Corporation he may be paid such reasonable salary as the majority of the members of the board shall from time to time determine in lieu of such per diem. The ex officio members of the board shall serve without compensation and shall be reimbursed for actual costs of travel and subsistence by the agency which they represent. (1953, c. 724, s. 3; 1963, c. 1005; 1965, c. 190; 1973, c. 476, s. 138.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 138, "Secretary of Human Resources" has been substituted for "Director of the Division of Vocational Education of the State Department of Public Instruction" in the first sentence of this section.

The North Carolina State College of Agriculture and Engineering of the University of North Carolina is now the North Carolina State University at Raleigh. See Session Laws 1963, c. 448, s. 6; 1965, c. 213. And see § 116-2.

§ 137-31.4. Cancellation of stock; Corporation to be nonstock. — On April 8, 1953, all of the capital stock of the Corporation, including both the stock held by the stockholders of the Corporation and the stock held by the Corporation itself, shall be cancelled and shall be surrendered to the Secretary of State of the State of North Carolina, who shall cancel and destroy such stock and make an appropriate notation upon the original records of the Corporation in his office showing the cancellation and destruction of such stock. Thereafter, said Corporation shall cease to have any capital stock and shall be a nonstock corporation. (1953, c. 724, s. 4.)

§ 137-31.5. Annual audit and financial statement. — The State Auditor shall, at least once in each year, make or cause to be made a detailed audit of all moneys received and disbursed by the Corporation during the preceding year and shall make or cause to be made a statement of the financial condition of the Corporation as of the close of such preceding year. A copy of said audit and statement shall be furnished to the Governor and to each member of the board of directors, and two copies shall be furnished to the principal office of the Corporation. (1953, c. 724, s. 5.)

§ 137-32. Powers of Corporation. — The Corporation is hereby authorized to accept and receive loans, grants and other assistance from the United States government, departments and/or agencies thereof for its use or for relief and rehabilitation purposes as well as to receive like financial and other aid when extended by the State of North Carolina or any of its departments, political subdivisions or agencies or any municipality, or from other sources, either public or private, and to employ the same in carrying out its rehabilitation purposes and activities; to utilize such means and agencies as shall be found useful or necessary to carry out the purposes of this Article and which will facilitate the securing of cooperation and financial assistance from the government of the United States, its departments or agencies, in aid thereof. (1935, c. 314, s. 2.)

§ 137-32.1. Powers of board of directors. — The existing board of directors of said Corporation shall have all the powers and authority of the stockholders and directors of said Corporation only until the appointment and qualification of the board of directors provided for in G.S. 137-31.3; and upon the appointment and qualification of the board of directors provided for in G.S. 137-31.3 it shall have all of the powers and authority heretofore vested in the stockholders and directors of the Corporation, and as such shall be vested with all the rights, powers, functions, and authority vested in said Corporation or its stockholders or directors by its certificate of incorporation, as amended, or by the statute or act of the General Assembly of North Carolina, including, but not limited to, the following powers:

(1) To adopt, alter or repeal its own bylaws, rules and regulations governing the conduct of its affairs and the manner in which its business shall be transacted and in which the powers granted to it shall be exercised.

(2) To elect or appoint all necessary officers and committees, and to employ agents, clerks, workmen and such other personnel as said board may deem advisable, to fix their compensation, to prescribe their duties, to dismiss without previous notice; and generally to be in sole and final control and management of the personnel of said Corporation.

(3) To contract for the purchase of, and to purchase all supplies, materials, equipment, printing, telephone, telegraph, electric light and power, postal and all other contractual services and needs of said corporation, to rent, lease or purchase all offices and office space, lands, buildings and equipment, needful or desirable in the conduct of the Corporation's business, to pay for same out of the funds of the Corporation; and generally to be in sole and final control and management of the acquisition, use and disposition of such property on behalf of the Corporation.

(4) To elect or appoint a treasurer or other officers or agents for the handling of the funds and fiscal affairs of the Corporation, to require the posting of surety bonds of such officers and agents and to fix the amount of such bonds, to provide for the methods and procedures for the collection and disbursement of the funds of the Corporation by such treasurer or other officers or agents, to fix the depository or depositories for the funds of the Corporation and to provide for the investment of the surplus funds of the Corporation from time to time,

to make loans or grants and to expend the funds of the Corporation for the furtherance and accomplishment of the objects and purposes of the Corporation as granted to it by its certificate of incorporation, as amended, or by statute or act of the General Assembly; and generally to be in sole and final control and management of the funds and fiscal affairs of the Corporation.

Provided, however, that any obligations or indebtedness incurred or created by the Corporation shall be that of the Corporation only and shall not constitute an obligation or indebtedness of the State of North Carolina, and no such obligation or indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina. (1953, c. 724, s. 6.)

§ 137-33. Cooperation by State officers, boards, etc. — The various officers, boards, courts and governing bodies of the State engaged in any way in the relief of destitution and unemployment are hereby authorized to cooperate with the North Carolina Rural Rehabilitation Corporation for the purposes specified in G.S. 137-31. (1935, c. 314, s. 3.)

§ 137-34. Fund for loans to county boards of education for erecting or equipping vocational buildings, etc. — As of the twenty-sixth day of July, 1938, the North Carolina Rural Rehabilitation Corporation is hereby authorized to create a fund of three hundred twenty-five thousand dollars ($325,000) to be used, together with any net income accruing thereon, for loans, to be made in the manner hereinafter set forth, to county boards of education for the purpose of erecting or equipping vocational buildings for teaching agriculture and home economics. (1939, c. 241, s. 1; 1941, c. 307, s. 1.)

§ 137-35. Loans to be made through State Board of Education. — The said loans shall be made through and with the assistance of the State Board of Education in the following manner:

(1) As applications for loans are made, the Director of Schoolhouse Planning and the Director of Vocational Education, State Department of Public Instruction, will select and recommend rural communities in which vocational agricultural and home economics buildings should be constructed or equipped.

(2) The Local Government Commission will then determine whether the county or school district can, under the Constitution, borrow funds necessary for the construction or equipment of such buildings.

(3) The State Board of Education will then pass upon, and approve or disapprove, the project from the standpoint of the State educational system.

(4) Such projects as have been approved will be submitted to the finance committee of the board of directors of North Carolina Rural Rehabilitation Corporation for final approval.

(5) Upon such final approval the North Carolina Rural Rehabilitation Corporation will deliver to the State Board of Education the funds which are to be advanced.

(6) Said funds will be loaned by the State Board of Education according to the same rules and regulations and legal requirements as those under which the State Literary Fund is now administered.

(7) Said loans will be repayable in ten equal annual installments and will bear interest at four percent (4%) per annum, payable annually, semiannually, or quarterly, as the State Board of Education shall determine.

(8) All loans made by the State Board of Education from such funds so advanced by the Rural Rehabilitation Corporation shall be evidenced by notes payable to the order of the Rural Rehabilitation Corporation and upon completion of said loan, such notes shall be delivered, without

further liability upon the State Board of Education, to the Rural Rehabilitation Corporation and a proper receipt taken therefor. (1939, c. 241, s. 2.)

§ 137-36. Approval of applications from county boards by State Board of Education. — The State Board of Education is hereby empowered to receive and approve applications from county boards of education for such vocational agricultural and home economics buildings or equipment loans in the same manner and on the same forms as it now receives applications for loans from the State Literary Fund, and in accordance with G.S. 115-220 to 115-224, and in accordance with other applicable provisions of law. (1939, c. 241, s. 3.)

Editor's Note. — The reference in this section to §§ 115-220 to 115-224 is to those sections as they stood before the revision of Chapter 115 by Session Laws 1955, c. 1372. For present provisions as to loans from the State Literary Fund, see §§ 115-101 through 115-108.2.

§ 137-37. Loans from State Literary Fund. — As an alternative method of making loans to county boards of education for the purpose of erecting or equipping such vocational agricultural and home economics buildings, the State Board of Education is hereby empowered to make loans for said purposes from the State Literary Fund and to sell or transfer, without recourse, the notes received for said loans (together with the security therefor) to North Carolina Rural Rehabilitation Corporation. Loans so made from the State Literary Fund for such vocational agricultural and home economics buildings shall be made in accordance with G.S. 115-220 to 115-224, and in accordance with other applicable provisions of law. (1939, c. 241, s. 4.)

Editor's Note. — The reference in this section to §§ 115-220 to 115-224 is to those sections as they stood before the revision of Chapter 115 by Session Laws 1955, c. 1372. For present provisions as to loans from the State Literary Fund, see §§ 115-101 through 115-108.2.

§ 137-38. County boards of education authorized to borrow funds. — County boards of education are hereby empowered to borrow through or from the State Board of Education amounts necessary for constructing or equipping vocational agricultural and home economics buildings to the same extent and in the same manner as they are now authorized by law to borrow from the State Literary Fund by the provisions of G.S. 115-220 to 115-224, and by other applicable provisions of law. (1939, c. 241, s. 5.)

Editor's Note. — The reference in this section to §§ 115-220 to 115-224 is to those sections as they stood before the revision of Chapter 115 by Session Laws 1955, c. 1372. For present provisions as to loans from the State Literary Fund, see §§ 115-101 through 115-108.2.

§ 137-39. Creation of fund for loans to students of rural social science authorized. — As of the twenty-sixth day of July, 1938, the North Carolina Rural Rehabilitation Corporation is hereby authorized to create a fund of twenty-five thousand dollars ($25,000) to be used, together with any net income accruing thereon, for loans to students engaged in the study of rural social science; and the directors of North Carolina Rural Rehabilitation Corporation are hereby authorized to make such regulations relative to said loans as to the said board of directors may seem advisable. (1939, c. 241, s. 6; 1941, c. 307, s. 2.)

§ 137-40: Repealed by Session Laws 1951, c. 155, s. 3.

§ 137-41. Transfers of real and personal assets to Farm Security Administration in trust, etc., ratified. — There is hereby ratified the act of North Carolina Rural Rehabilitation Corporation and its board of directors in transferring to the Farm Security Administration of the United States Department of Agriculture all of its real and personal assets of every kind and description (except the funds hereinabove referred to and except sums necessary for or incident to making the transfer to Farm Security Administration), in trust until the twentieth day of May, 1950, to use said property for certain purposes of the North Carolina Rural Rehabilitation Corporation selected and designated by the board of directors of said Corporation, and in trust thereafter to repay or redeliver to North Carolina Rural Rehabilitation Corporation any unused or unexpended portions of said property. (1939, c. 241, s. 8.)

§ 137-42. Agreements as to retransfer and future use of assets. — The North Carolina Rural Rehabilitation Corporation is hereby authorized and empowered to enter into all such contracts and agreements with the United States of America, acting by and through the Secretary of Agriculture or other appropriate officials of the United States government, as may be necessary or appropriate to accomplish the retransfer to the North Carolina Rural Rehabilitation Corporation of the funds and assets of said Corporation now held by the Secretary of Agriculture pursuant to the agreement of transfer between the North Carolina Rural Rehabilitation Corporation and the United States of America, bearing date of May 20, 1938. Said Corporation is further authorized and empowered to enter into such covenants and agreements with the Secretary of Agriculture or other appropriate officials of the United States government in regard to the future use of said returned assets or in any other regard as may be required by Public Law 499, 81st Congress, approved May 3, 1950, or by the Secretary of Agriculture acting pursuant thereto. (1951, c. 155, s. 1.)

§ 137-43. Agreements for transfer of assets to Secretary of Agriculture for rural rehabilitation purposes. — The North Carolina Rural Rehabilitation Corporation is further authorized and empowered to enter into such agreements with the Secretary of Agriculture or other appropriate officials of the United States government, and upon such terms and conditions and for such periods of time as may be mutually agreeable, for the transfer by the Corporation to the Secretary of Agriculture of all or any part of its assets for use in the State of North Carolina in carrying out the purpose of Titles I and II of the Bankhead-Jones Farm Tenant Act as now or hereafter amended by the Congress of the United States and for such other rural rehabilitation purposes within the State of North Carolina as said Corporation may deem advisable. (1951, c. 155, s. 2.)

Chapter 138.

Salaries, Fees and Allowances

Sec.
138-1. Annual salaries payable monthly.
138-2. Payment of fees; when to be paid in advance.
138-3. Compensation limited to that fixed by law.
138-4. Governor to set salaries of administrative officers; exceptions.

Sec.
138-5. Per diem and allowances of State boards, etc.
138-6. Travel allowances of State officers and employees.
138-7. Exceptions to §§ 138-5 and 138-6.
138-8. Moving expenses of State employees.

§ 138-1. Annual salaries payable monthly. — All annual salaries shall be paid monthly except employees of the institutions of the Department of Human Resources may be paid biweekly effective July 1, 1974. (Code, s. 3731; 1893, c. 54; Rev., s. 2772; C. S., s. 3847; 1925, c. 230; 1928, c. 100; 1973, c. 1430.)

§ 138-2. Payment of fees; when to be paid in advance. — All public officers shall receive the fees prescribed for them respectively, from the persons for whom, or at whose instance, the service shall be performed, except persons suing as paupers, and no officer shall be compelled to perform any service, unless his fee be paid or tendered, except in criminal actions. The said officers shall receive no extra allowance or other compensation whatever, unless the same shall be expressly authorized by statute. In case the service shall be ordered by any proper officer of the State, or of a county, for the benefit of the State or county, the fees need not be paid in advance; but if for the State, shall be paid by the State, as other claims against it are; if for a county, by the board of commissioners, out of the county funds. The fees in criminal cases are not demandable in advance. (Code, ss. 1173, 3758; Rev., s. 2804; C. S., s. 3849.)

Cross References. — As to liability of defendant in criminal actions for costs, see §§ 6-47, 6-48. As to liability of prosecuting witness for costs, see § 6-49 et seq. As to constitutional provision, see N.C. Const., Art. IV, § 21.

Officers of Court Must Demand Fees. — Officers of the courts are not compelled to perform their duties, unless the fees prescribed by law are paid or tendered them, but they must demand them before laches can be imputed to the litigants. West v. Reynolds, 94 N.C. 333 (1886).

Same—When Demand Not Made. — The officer is not "compelled to perform" the required service, but he may perform it, and dispense with the payment, and if he does not so intend, he should say so at the time, and not presume that the posting of the notice in his office, of an inflexible rule that he had adopted and from which he would not under any circumstances depart would be known to everyone. West v. Reynolds, 94 N.C. 333 (1886).

Effect of Unconditional Pardon. — Fees due officers of the court are vested rights by law, and are not discharged when the defendant receives an unconditional pardon, after conviction and sentence, from the Governor of the State. State v. Mooney, 74 N.C. 98 (1876).

When Pardon Discharges Defendant from Costs. — In State v. Underwood, 64 N.C. 599 (1870), it was held that where the pardon is pleaded after verdict and before judgment, it will discharge the defendant from the costs. State v. Mooney, 74 N.C. 98 (1876).

Supreme Court Clerk's Fee for Docketing Case. — The appellant's undertaking does not cover the fee of the clerk of the Supreme Court in docketing the case, and the clerk is in the exercise of his right in refusing to docket the transcript where he has demanded the prescribed fee in advance and its payment has been refused. Dunn v. Clerk's Office, 176 N.C. 50, 96 S.E. 738 (1918).

Right of Clerk of Superior Court. — The clerk had the right, even under the common law, as he has under the statute, to demand his fees in advance. Clerk v. Wagoner, 26 N.C. 131 (1843); Martin v. Chesteen, 75 N.C. 96 (1876); Andrews v. Whisnant, 83 N.C. 446 (1880); West v. Reynolds, 94 N.C. 333 (1886); Long v. Walker, 105 N.C. 90, 10 S.E. 858 (1890); Ballard v. Gay, 108 N.C. 544, 13 S.E. 207 (1891).

Same—In Criminal Actions. — In criminal actions, the clerk of the superior court cannot require that the costs of transcript upon appeal shall be paid in advance, although the defendant did not appeal in forma pauperis, and a certiorari will issue directing the clerk to send up the transcript which he holds for such prepayment. State v. Nash, 109 N.C. 822, 13 S.E. 733 (1891).

Same—Section 1-305. — This section and § 1-305 providing that clerks shall issue execution on all judgments rendered in their respective courts, within six weeks of the rendition thereof, or be amerced in the sum of one hundred dollars, must be construed together, it follows that clerks of the superior court will not incur the penalty prescribed in § 1-305 unless the plaintiff pays or tenders him his fees for that service. Bank of Oxford v. Bobbitt, 111 N.C. 194, 16 S.E. 169 (1892).

Register May Refuse to Function. — The register has the right to refuse to treat a mortgage as delivered to him for registration until his fees in that respect have been paid. Cunninggim v. Peterson, 109 N.C. 33, 13 S.E. 714 (1891).

Legislative Power. — The legislature may reduce or increase the salaries of such officers as are not protected by the Constitution, during their term of office. Cotten v. Ellis, 52 N.C. 545 (1860).

Taxation of Salary. — It was formerly held that the State could not tax the salary of a State officer whose office was created by the Constitution. Purnell v. Page, 133 N.C. 125, 45 S.E. 534 (1903).

Improperly Collected Fee Subject to Recovery. — Where a person is compelled to pay a public officer fees which he had no right to claim, in order to induce him to do his duty such fees may be recovered back. Robinson v. Ezzell, 72 N.C. 231 (1875).

§ 138-3. Compensation limited to that fixed by law. — No officer or employee of the State shall receive any compensation other than the salaries fixed by law, except as provided by way of fees or by special appropriation or from any departmental funds. (1907, c. 830, s. 1; c. 994, s. 1; C. S., s. 3850; 1925, c. 128, s. 1.)

§ 138-4. Governor to set salaries of administrative officers; exceptions. —The salaries of all State administrative officers not subject to the State Personnel Act shall be sent by the Governor, subject to the approval of the Advisory Budget Commission and shall be payable in equal monthly installments. In setting the salaries of those who serve as administrative officers to a board or commission, the Governor and Advisory Budget Commission shall give consideration to the recommendations, if any, of the board or commission involved. This provision does not apply to State officials whose positions are specifically authorized by the Constitution, nor to the chief administrative assistants of such officials, nor to the administrative officers of the occupational licensing boards of the State, except those administrative officers of occupational licensing boards whose salaries are now set by the Governor, subject to the approval of the Advisory Budget Commission. (1947, c. 898; 1957, c. 541, s. 1.)

§ 138-5. Per diem and allowances of State boards, etc. — (a) Except as provided in subsection (c) of this section, members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be compensated for their services at the following rates:

(1) Compensation at the rate of fifteen dollars ($15.00) per diem for each day of service;

(2) A subsistence allowance of
  a. Fifteen dollars ($15.00) per day for each day of service when the member did not spend the night away from his home,
  b. Thirty-five dollars ($35.00) per day for each day of service when the member spent the night away from his home;

(3) Reimbursement of travel expenses at the rates allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a).

(4) For convention registration fees, the actual amount expended, as shown by receipt.

(b) Except as provided in subsection (c) of this section, the schedules of per diem, subsistence, and travel allowances established in this section shall apply to members of all State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer, excluding those boards, commissions, committees and councils the members of which are now serving without compensation and excluding occupational licensing boards as defined in G.S. 93B-1; and all special statutory provisions relating to per diem, subsistence, and travel allowances are hereby amended to conform to this section.

(c) Members of the Advisory Budget Commission shall receive no per diem compensation for their services, but shall receive the same subsistence and travel allowances as are provided for members of the General Assembly for services on interim legislative committees.

(d) The subsistence allowances provided in this section shall be paid without requiring the claimant to file any vouchers covering actual expenditures for meals or lodging.

(e) Out-of-state travel on official business by members of State boards, commissions, committees and councils which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget. (1961, c. 833, s. 5; 1963, c. 1049, s. 1; 1965, c. 169; 1971, c. 1139; 1973, c. 1397.)

§ 138-6. Travel allowances of State officers and employees. — (a) Travel on official business by the officers and employees of State departments, institutions and agencies which operate from funds deposited with the State Treasurer shall be reimbursed at the following rates:

(1) For transportation by privately owned automobile, fifteen cents (15¢) per mile of travel and the actual cost of tolls paid;

(2) For bus, railroad, Pullman, or other conveyance, actual fare;

(3) In lieu of actual expenses incurred for subsistence, payment of twenty-three dollars ($23.00) per day when traveling in-state or thirty-five dollars ($35.00) per day when traveling out-of-state. When travel involves less than a full day (24-hour period), a reasonable prorated amount shall be paid in accordance with regulations and criteria which shall be promulgated and published by the Director of the Budget. This shall not apply to those employees who are employed by the North Carolina State Burial Association Commission.

(4) For convention registration fees, not to exceed fifteen dollars ($15.00) per convention.

(b) Out-of-state travel on official business by the officers and employees of State departments, institutions, and agencies which operate from funds deposited with the State Treasurer shall be reimbursed only upon authorization obtained in the manner prescribed by the Director of the Budget. (1961, c. 833, s. 6; 1963, c. 1049, s. 2; 1965, c. 1089; 1969, c. 1153; 1971, c. 881, ss. 1, 2; 1973, c. 595, s. 1; 1973, c. 1456; 1975, c. 892, s. 1; 1977, c. 928.)

Cross Reference. — For provisions authorizing the Commissioner of Insurance to pay examiners an amount in lieu of traveling expenses, see § 58-63(3).

Editor's Note. — The 1975 amendment increased the amounts from $19.00 to $23.00 and from $25.00 to $35.00 in subdivision (a)(3).

The 1977 amendment, in subdivision (a)(3), added "In lieu of actual expenses incurred" to the beginning of the first sentence, substituted "payment of" for "the actual amount expended for room, meals and reasonable gratuities not to exceed" and deleted "a total of" preceding "thirty-five dollars ($35.00)" in the first sentence, and added the second and third sentences.

Session Laws 1975, c. 892, s. 2, provides that the heads of departments shall administer the provisions of subdivision (a)(3) in a manner to assure that those provisions are funded from within existing authorized budgets.

Reimbursement of State Officers and Employees Traveling in Privately Owned Automobiles on Official Business. — State officers and employees are entitled to be reimbursed at a rate of fifteen cents (15¢) per mile traveled when privately owned automobiles are used in pursuance of official State business, regardless of the number of miles traveled. Opinion of Attorney General to Honorable Donald L. Smith, 45 N.C.A.G. 168 (1975).

§ 138-7. Exceptions to §§ 138-5 and 138-6. — The Director of the Budget, with the approval of the Advisory Budget Commission, shall establish and publish uniform standards and criteria under which actual expenses in excess of the travel and subsistence allowances and convention registration fees as prescribed in G.S. 138-5 and 138-6, may be authorized for extraordinary charges for hotel, meals, and registration, whenever such charges are the result of required official business. No expenditures in excess of the maximum amounts set forth in G.S. 138-5 and 138-6 shall be reimbursed unless the head of the State department, agency or institution involved has secured the approval of the Director of the Budget prior to the making of such expenditures. (1961, c. 833, s. 6.1; 1965, c. 1089; 1969, c. 1153; 1971, c. 881, s. 3; 1973, c. 595, s. 2.)

Director of the Budget Has Authority to Authorize Payment of Actual Expenses in Excess of Statutory Maximum. — See opinion of Attorney General to Mr. G. Andrew Jones, State Budget Office, Department of Administration, 40 N.C.A.G. 742 (1970).

§ 138-8. Moving expenses of State employees. — Subject to the rules and regulations promulgated by the Department of Administration and approved by the Director of the Budget, any department, institution or agency of the State is hereby authorized to pay, from funds available to it, reasonable expenses for transporting the household goods of an employee and members of his household when the transfer of the employee is considered by the Director of the Budget to be in the best interests of the State. (1977, c. 802, s. 15.)

Editor's Note. — Session Laws 1977, c. 802, s. 53, contains a severability clause.

Chapter 139.

Soil and Water Conservation Districts.

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ARTICLE 1.

General Provisions.

§ 139-1. Title of Chapter. — This Chapter may be known and cited as the Soil Conservation Districts Law. (1937, c. 393, s. 1.)

Editor's Note. — For article on "Introduction to Water Use Law in North Carolina," see 46 N.C.L. Rev. 1 (1967).

For note on disposition of diffused surface waters in North Carolina, see 47 N.C.L. Rev. 205 (1968).

§ 139-2. Legislative determinations, and declaration of policy. — (a) Legislative Determinations. — It is hereby declared, as a matter of legislative determination:

(1) The Condition. — The farm, forest and grazing lands of the State of North Carolina are among the basic assets of the State and the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this State by wind and water; the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; the topsoil is being blown and washed out of fields and pastures; there has been an accelerated washing of sloping fields; these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

(2) The Consequences. — The consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottomlands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, drainage developments, farming, and grazing.

(3) The Appropriate Corrective Methods. — To conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages, and further the conservation, utilization, and disposal of water, and the development of water resources it is necessary that

land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices and works of improvement for flood prevention or the conservation, utilization, and disposal of water and the development of water resources be adopted and carried out. Among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, contour furrowing, farm drainage, land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands with water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; the addition of soil amendments, manurial materials, and fertilizers for the correction of soil deficiencies and to promote increased growth of soil-protecting crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(b) Declaration of Policy. — It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this State, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, utilization, and disposal of water, and the development of water resources and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this State. (1937, c. 393, s. 2; 1947, c. 131, s. 1; 1959, c. 781, ss. 2, 3.)

§ 139-3. Definitions. — Wherever used or referred to in this Chapter, unless a different meaning clearly appears from the context:

(1) "Agency of this State" includes the government of this State and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of the State.

(2) "A qualified voter" includes any person qualified to vote in elections by the people under the Constitution of this State.

(3) "Environmental Management Commission" or "State Environmental Management Commission" means the Environmental Management Commission of the State of North Carolina, or the board, body or commission succeeding to its principal functions, or in whom shall be vested by law the powers herein granted to the said Environmental Management Commission.

(4) "Commission" or "Soil and Water Conservation Commission" means the agency created in G.S. 139-4.

(5) "District" or "soil and water conservation district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of this Chapter, for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

(6) "Due notice" means notice given by posting the same at the courthouse door and at three other public places in the county, including those where it may be customary to post notices concerning county or municipal affairs generally, not less than 10 days before the date of the event of which notice is being given. At any hearing held pursuant to such a notice at the time and place designated in such a notice,

adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

(7) "Government" or "governmental" includes the government of this State, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

(8) The terms "land occupier" or "occupier of land," and "landowner" or "owner of land" include any person, firm or corporation who shall hold title to or shall have contracted to purchase any lands lying within a soil and water conservation district or a watershed improvement district organized under the provisions of this Chapter.

(9) "Nominating petition" means a petition filed under the provisions of G.S. 139-6 to nominate candidates for the office of supervisor of a soil and water conservation district.

(10) "Notice" as used in Article 2 of this Chapter shall mean notice published at least once a week for two consecutive weeks in at least one newspaper of general circulation published in each county wherein any part of a watershed improvement district lies or if in any instance there is no such newspaper then, in lieu thereof, in a newspaper of general circulation in such county.

(11) "Petition" means a petition filed under the provisions of Article 1 of this Chapter for the creation of a soil and water conservation district, or a petition filed under the provisions of Article 2 of this Chapter for the creation of a watershed improvement district.

(12) "State" means the State of North Carolina.

(13) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this Chapter.

(14) "Trustees" means residents within a watershed improvement district who are appointed or elected to carry on the business of a watershed improvement district, organized under the provisions of Article 2 of this Chapter.

(15) "United States" or "agencies of the United States" includes the United States of America, the Soil Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(16) "Watershed improvement district" means a governmental subdivision of this State, and a public body corporate and politic, organized in accordance with the provisions of Article 2 of this Chapter, for the purposes, with the powers, and subject to the restrictions therein set forth.

(17) A "watershed improvement project" means a project of watershed improvement (whether involving flood prevention, drainage improvement, water supply, soil and water conservation, recreation facilities, fish and wildlife habitat, or other related purposes, singly or in combination) which is undertaken:

  a. By a watershed improvement district under the provisions of Article 2 of Chapter 139 of the General Statutes of North Carolina or any local act granting similar powers.
  b. By a soil and water conservation district under the provisions of Article 1 of Chapter 139 of the General Statutes or any local act granting similar powers.
  c. By a drainage district under the provisions of Chapter 156 of the General Statutes or any local act granting similar powers.
  d. By a county that is carrying out a county watershed improvement program under the provisions of Article 3 of Chapter 139 of the General Statutes or any local act granting similar powers.

e. By any combination of the foregoing, acting as joint sponsors of a watershed improvement program.

f. By any watershed, drainage or flood control project planned or carried out by the Soil Conservation Service, Tennessee Valley Authority or the Army Corps of Engineers.

(18) A "watershed improvement work" means a single feature or facility or portion of a watershed improvement project, such as a water retarding or impoundment structure for one or more authorized watershed purposes or a section of improved stream channel or the land treatment measures associated with a water retarding structure. (1937, c. 393, s. 3; 1947, c. 131, s. 2; 1959, c. 781, s. 4; 1965, c. 582, s. 1; 1967, c. 987, s. 1; 1971, c. 1138, s. 1A; 1973, c. 1262, s. 38.)

Cross References. — As to the Environmental Management Commission, see §§ 143B-282 through 143B-285. As to the Soil and Water Conservation Commission, see §§ 143B-294 through 143B-297.

Editor's Note. — Session Laws 1967, c. 987, which amended this section and amended or added various other sections in this chapter, provides in part: "Sec. 11. Nothing contained in this act shall authorize or allow the withdrawal of water from a watershed or stream except to the extent and degree now permissible under the existing common and statute law of this State; nor to change or modify such existing common or statute law with respect to the relative rights of riparian owners or others concerning the use or disposal of water in the streams of this State; nor to authorize a district, its officers or governing body or any other person, firm, corporation (public or private), body politic or governmental agency to utilize or dispose of water except in the manner and to the extent permitted by the existing common and statute law of this State.

"Sec. 12. The authority granted hereinabove is supplemental and additional to any other authority granted by law relating to watershed improvement programs, whether by general or special law."

Session Laws 1973, c. 1262, s. 38, provides that whenever the words "State Soil and Water Conservation Committee" or the words "State Committee" or "Committee" when referring to the State Soil and Water Conservation Committee or the words "State Soil Conservation Committee" are used or appear in any statute or law of this State, they shall be deleted and the words "State Soil Conservation Commission" or "Commission," as appropriate, shall be substituted, unless otherwise provided in the Act. The agency created by s. 38 of the act (§ 143B-294), however, is designated the "Soil and Water Conservation Commission," and that title has been used in subdivision (4) of this section as set out above, and in the other sections of this Chapter treated as amended by Session Laws 1973, c. 1262, s. 38.

§ 139-3.1. Change of names in General Statutes. — The General Statutes of North Carolina are hereby amended by striking out the words "soil conservation district" wherever they appear in Chapter 139 and any other place in the General Statutes, and inserting in lieu thereof in each instance the words "soil and water conservation district"; and by striking out the words "State Soil Conservation Committee" wherever they appear in Chapter 139 and at any other place in the General Statutes, and inserting in lieu thereof in each instance the words "State Soil and Water Conservation Committee." (1961, c. 746, s. 1.)

§ 139-4. Powers and duties of Soil and Water Conservation Commission generally. — (a) to (c) Repealed by Session Laws 1973, c. 1262, s. 38, effective July 1, 1974.

(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.

(2) To keep the supervisors of each of the several districts organized under the provisions of this Chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an

interchange of advice and experience between such districts and cooperation between them.

(3) To coordinate the programs of the several soil and water conservation districts organized hereunder so far as this may be done by advice and consultation.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

(5) To disseminate information throughout the State concerning the activities and programs of the soil and water conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

(6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the Commission may change such lines in such manner as in its judgment would best serve the interests of the occupiers of land in the area affected thereby.

(7) To receive, review and approve or disapprove applications for planning assistance under the provisions of Public Law 566 (83rd Congress, as amended), and recommend priorities on such applications. (1937, c. 393, s. 4; 1947, c. 131, s. 3; 1953, c. 255; 1957, c. 1374, s. 1; 1959, c. 781, s. 5; 1961, c. 746, s. 2; 1965, c. 582, s. 2; c. 932; 1971, c. 396; 1973, c. 1262, s. 38.)

State Government Reorganization. — The Soil and Water Conservation Committee (now Soil and Water Conservation Commission) was transferred to the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development) by former § 143A-124, enacted by Session Laws 1971, c. 864 and repealed by Session Laws 1973, c. 1262, and remains a part of the Department under § 143B-279, enacted by Session Laws 1973, c. 1262.

§ 139-5. Creation of soil and water conservation districts. — (a) Any 25 occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the Soil and Water Conservation Commission asking that a soil and water conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district.

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory described in the petition.

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate.

(4) A request that the Soil and Water Conservation Commission duly define the boundaries for such districts; that a referendum be held within the territory so defined on the question of the creation of a soil and water conservation district in such territory; and that the Commission determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the Soil and Water Conservation Commission may consolidate all or any such petitions.

Town or village lots or government-owned or controlled lands may be included within the boundaries of any district. As used in this subsection: The term "government-owned or controlled land" includes land owned or controlled by any governmental agency or subdivision, federal, State or local; and the term "town and village lots" means parcels or tracts on which no agricultural operations are conducted, or (being less than three acres in extent) whose production of agricultural products for home use or for sale during the immediately preceding calendar year was of less than two hundred and fifty dollars ($250.00) in value. This section applies to existing soil and water conservation districts as well as districts that may hereafter be formed. Insofar as it applies to existing districts it is intended to be declaratory of the present boundaries of such districts as defined by other charters.

(b) Within 30 days after such a petition has been filed with the Soil and Water Conservation Commission, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such districts, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this Chapter, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for the inclusion of the district, and such further hearing held. After such hearing, if the Commission shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determination and in defining such boundaries, the Commission shall give due weight and consideration to the topography or the area considered and of the state and composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil and water conservation districts already organized or proposed for organization under the provisions of this Chapter, and such other physical, geographical and economic factors as are relevant, having due regard to the legislative determination set forth in G.S. 139-2. The territory to be included within such boundaries need not be contiguous. If the Commission shall determine after such hearing after due consideration of the said relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.

(c) After the Commission has made and recorded a determination that there is need, in the interest of the public health, safety and welfare for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this Chapter is administratively practicable and feasible. To assist the Commission in the determination of such administrative practicability and feasibility, it shall be the duty of the Commission, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil and water conservation district of the lands below described and lying in the county(ies) of . . . ., ... and . . . ." and "Against creation of a soil and water conservation district of the lands below described and lying in the county(ies) of . . . . and . . . ." shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the Commission. All occupiers of land lying within the boundaries of the territory, as determined by the Soil and Water Conservation Commission, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

(d) The Department of Natural Resources and Community Development shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informality in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(e) The Department of Natural Resources and Community Development shall publish the results of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such in the manner hereinafter provided. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determination set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the operations of the proposed district within the defined boundaries is administratively practicable and feasible unless at least a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

(f) If the Commission shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two temporary supervisors to act as the governing body of the district, who shall serve until supervisors are elected or appointed and qualify as provided in G.S. 139-6 and 139-7. Such districts shall be a governmental subdivision of this State and a public body corporate and politic, upon the taking of the following proceedings:

The two appointed temporary supervisors shall present to the Secretary of State an application signed by them which shall set forth (and such application need contain no detail other than the mere recitals):

(1) That a petition for the creation of the district was filed with the Soil and Water Conservation Commission pursuant to the provisions of this Chapter and that the proceedings specified in this Chapter were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and public body, corporate and politic under this Chapter; and that the Commission has appointed them as supervisors;

(2) The name and official residence of each of the temporary supervisors, together with a certified copy of the appointment evidencing their right to office;

(3) The name which is proposed for the district; and

(4) The location of the principal office of the supervisors of the district.

The application shall be subscribed and sworn to by each of the said temporary supervisors before an officer authorized by the laws of this State to take and certify oaths, who shall certify upon the application that he personally knows the temporary supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the Soil and Water Conservation Commission, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid, that the Commission did duly determine that there is need, in the interest of the public health, safety and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the Commission did duly determine that the operation of the proposed district is administratively practicable and feasible. The said statement shall set forth the boundaries of the district as they have been defined by the Commission.

The Secretary of State shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil and water conservation district of this State or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the Secretary of State shall find that the name proposed for the district is identical with that of any other soil and water conservation district of this State, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the Soil and Water Conservation Commission, which shall thereupon submit to the Secretary of State a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a governmental subdivision of this State and a public body corporate and politic. The Secretary of State shall make and issue to the said supervisors a certificate, under the seal of the State, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the Soil and Water Conservation Commission as aforesaid, but in no event shall they include any area included within the boundaries of another soil and water conservation district organized under the provisions of this Chapter.

(g) After six months shall have expired from the date of entry of a determination by the Soil and Water Conservation Commission that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this Chapter.

(h) Petitions for including additional territory within an existing district may be filed with the Soil and Water Conservation Commission, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusions. The Commission shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this Chapter for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than 25, the petition may be filed when signed by two thirds of the occupiers of such area, and in such case no referendum need be held. In referenda petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

(i) In any suit, action or proceeding involving the validity or enforcement of, or relating to any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate duly certified by the Secretary of State shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof. (1937, c. 393, s. 5; 1947, c. 131, s. 4; 1959, c. 781, s. 6; 1965, c. 582, s. 3; 1973, c. 1262, s. 38; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentences of subsections (d) and (e).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 139-6. District board of supervisors — elective members; certain duties. — After the issuance of the certificate of organization of the soil conservation district by the Secretary of State, an election shall be held in each county of the district to elect the members of the soil conservation district board of supervisors as herein provided.

The district board of supervisors shall consist of three elective members to be elected in each county of the district, and that number of appointive members as provided in G.S. 139-7. Upon the creation of a district, the first election of the members shall be held at the next succeeding election for county officers.

All elections for members of the district board of supervisors shall be held at the same time as the regular election for county officers beginning in November 1974. The election shall be nonpartisan and no primary election shall be held. The election shall be held and conducted by the county board of elections. No absentee ballots shall be permitted in the election.

Candidates shall file their notice of candidacy on forms prescribed by the county board of elections. The notice of candidacy must be filed no later than 12:00 noon on the first Friday in July preceding the election. The candidate shall pay a filing fee of five dollars ($5.00) at the time he files the notice of candidacy.

Beginning with the election to be held in November 1974, the two candidates receiving the highest number of votes shall be elected for a term of four years, and the candidate receiving the next highest number of votes shall be elected for a term of two years; thereafter, as their terms expire, their successors shall be elected for terms of four years.

The persons elected in 1974 and thereafter shall take office on the first Monday in December following their election.

The terms of the present members of the soil conservation districts, both elective and appointive members, are hereby extended to or terminated on the first Monday in December 1974.

All qualified voters of the district shall be eligible to vote in the election. Except as provided in this Chapter, the election shall be held in accordance with the applicable provisions of Articles 23 and 24 of Chapter 163 of the General Statutes.

The district board of supervisors, after the appointment of the appointive members has been made, shall select from its members a chairman, a vice-chairman and a secretary. It shall be the duty of the district board of supervisors to perform those powers, duties and authority conferred upon supervisors under this Chapter; to develop annual county and district goals and plans for soil conservation work therein; to request agencies, whose duties are such as to render assistance in soil and water conservation, to set forth in writing what assistance they may have available in the county and district. (1937, c. 393, s. 6; 1947, c. 131, s. 5; 1949, c. 268, s. 1; 1957, c. 1374, s. 2; 1963, c. 815; 1973, c. 502, s. 1; 1975, c. 798, s. 4.)

Editor's Note. — The 1975 amendment substituted "first Friday in July" for "second Friday in September" in the second sentence of the fourth paragraph.

§ 139-7. District board of supervisors — appointive members; organization of board; certain powers and duties. — The governing body of a soil and water conservation district shall consist of the three elective supervisors from the county or counties in the district, together with the appointive members appointed by the Soil and Water Conservation Commission pursuant to this section, and shall be known as the district board of supervisors. When a district is composed of less than four counties, the elective supervisors of each county shall on or before October 31, 1978, and on or before October 31 as the terms of the appointive supervisors expire, recommend in writing two persons to the Commission to be appointed to serve with the elective supervisors. If the names are not submitted to the Commission as required, the Commission shall appoint two persons of the district to the district board of supervisors to serve with the elected supervisors. The Commission shall make its appointments prior to or at the November meeting of the Commission. Appointive supervisors shall take office on the first Monday in December following their appointment. Such appointive supervisors shall serve for a term of four years, and thereafter, as their terms expire, their successors shall serve for a term of four years. The terms of office of all appointive supervisors who have heretofore been lawfully appointed for terms the final year of which presently extends beyond the first Monday in December are hereby terminated on the first Monday in December of the final year of appointment. Vacancies for any reason in the appointive supervisors shall be filled for the unexpired term by the appointment of a person by the Commission from the district in which the vacancy occurs. Vacancies for any reason in the elected supervisors shall be filled for the unexpired term by appointment by the Commission of a person from the county in the district in which the vacancy occurs.

In those districts composed of four or more counties, the Commission may, but is not required, to appoint one district supervisor without recommendation from the elective supervisors, to serve as a district supervisor along with the elected members of the board of supervisors. Such appointment shall be made at the same time other appointments are made under this section, and the person appointed shall serve for a term of four years.

The supervisors shall designate a chairman and may, from time to time, change such designation. A simple majority of the board shall constitute a quorum for the purpose of transacting the business of the board, and approval by a majority of those present shall be adequate for a determination of any matter before the board, provided at least a quorum is present. Supervisors of soil and water conservation districts shall be compensated for their services at the per diem rate and allowed travel, subsistence and other expenses, as provided for State boards, commissions and committees generally, under the provisions of G.S. 138-5; provided, that when per diem compensation and travel, subsistence, or other expense is claimed by any supervisor for services performed outside the district for which such supervisor ordinarily may be appointed or elected to serve, the same may not be paid unless prior written approval is obtained from the Department of Natural Resources and Community Development.

The supervisors may employ a secretary, technical experts, whose qualifications shall be approved by the Department, and such other employees as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the Attorney General of the State for such legal services as they may require. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents, or employees such powers and duties as they may deem proper. The supervisors shall furnish to the Soil and Water Conservation Commission, upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as it may require in the performance of its duties under this Chapter.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the Soil and Water Conservation Commission upon notice and hearing, for neglect of duty, incompetence or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

All district supervisors whose terms of office expire prior to the first Monday in January, 1948, shall hold over and remain in office until supervisors are elected or appointed and qualify as provided in this Chapter, as amended. The terms of office of all district supervisors, who have heretofore been elected or appointed for terms extending beyond the first Monday in January, 1948, are hereby terminated on the first Monday in January, 1948. (1937, c. 393, s. 7; 1943, c. 481; 1947, c. 31, ss. 6, 7; 1957, c. 1374, s. 3; 1963, c. 563; 1973, c. 502, s. 2; c. 1262, s. 38; 1977, c. 387; c. 771, s. 4.)

Editor's Note. — The first 1977 amendment in the first paragraph, substituted "October 31, 1978, and on or before October 31" for "December 31, 1974, and on or before December 31" in the second sentence, substituted "November" for "January" in the fourth sentence, substituted "first Monday in December" for "third Wednesday in January" in the fifth sentence, combined the former sixth and seventh sentences by deleting "one for a term of four years" from the end of the former sixth sentence, substituted "Such appointive supervisors shall serve" for "One appointed supervisor shall be appointed" and "serve for a term" for "be appointed for terms" in the present sixth sentence, and added the present seventh sentence.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

§ 139-8. Powers of districts and supervisors. — A soil conservation district organized under the provisions of this Article shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers in addition to others granted in other sections of this Chapter.

(1) To conduct surveys and investigations relating to the character of soil erosion and floodwater and sediment damages, and to the conservation, utilization, and disposal of water, the development of water resources, and the preventive and control measures and works of improvement needed, to publish the results of such surveys and investigations, and to disseminate information concerning such preventive and control measures and works of improvement.

(2) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection (a), subdivision (3) of G.S. 139-2, on lands owned or controlled by this State or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupiers of such lands or the necessary rights or interest in such lands.

(3) To cooperate, or enter into agreements with, and within the limits or appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupiers of land within the district, in the carrying on of erosion control and prevention operations and works of improvement for flood prevention or the conservation, utilization, and disposal of water and development of water resources within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this Chapter.

(4) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this Chapter; and to sell, lease, or otherwise dispose of its property or interests therein in furtherance of the purposes and the provisions of this Chapter.

(5) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water and the development of water resources.

(6) To construct, improve, operate, and maintain such structures, works and projects as may be necessary or convenient for the performance of any of the operations authorized in this Chapter, including watershed improvement structures, works, and projects as well as any other

structures, works, and projects which the district is authorized to undertake.

(7) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention or the conservation, utilization and disposal of water and development of water resources, within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to bring such plans and information to the attention of occupiers of lands within the district.

(8) To act as agent for the United States, or any of its agencies, in connection with the acquisition, construction, operation, or administration of any project for soil conservation, erosion control, erosion prevention, flood prevention, or for the conservation, utilization, and disposal of water and development of water resources, or combinations thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations, except that all forest tree seedlings shall be obtained insofar as available from the Department of Natural Resources and Community Development in cooperation with the United States Department of Agriculture.

(9) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not inconsistent with this Chapter, to carry into effect its purposes and powers.

(10) As a condition to the extending of any benefits under this Chapter to, or the performance of work upon, any lands not owned or controlled by this State or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreement or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages therein.

(11) No provision with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

(12) Nothing contained in this Chapter shall authorize or allow the withdrawal of water from a watershed or stream except to the extent and degree now permissible under the existing common and statute law of this State; nor to change or modify such existing common or statute law with respect to the relative rights of riparian owners or others concerning the use or disposal of water in the streams of this State; nor to authorize a district, its officers or governing body or any other person, firm, corporation (public or private), body politic or governmental agency to utilize or dispose of water except in the manner and to the extent permitted by the existing common and statute law of this State. (1937, c. 398, s. 8; 1939, c. 341; 1959, c. 781, s. 7; 1969, c. 711, s. 1; 1973, c. 1262, s. 38; 1977, c. 771, s. 4.)

Local Modification. — Duplin, as to subdivision (6): 1969, c. 286; Johnston: 1969, c. 955; New Hanover: 1969, c. 958; Pender and Sampson, as to subdivision (6): 1969, c. 286; Wayne: 1969, c. 821.

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" near the end of subdivision (8).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Disposition or Exchange of Land by Watershed Improvement District. — See opinion of Attorney General to Mr. Samuel H. Johnson, Watershed Improvement Commission, 41 N.C.A.G. 228 (1971).

§ 139-8.1. Purposes of Chapter. — (a) It is hereby declared that the provisions of General Statutes Chapter 139 were intended to authorize the maintenance of watershed improvement works and projects, as well as watershed improvement structures. All expenditures heretofore incurred by any local watershed sponsor for any such maintenance of works, projects, or structures are hereby validated and confirmed.

(b) The proceeds of any tax heretofore approved by the voters of a county for a county watershed improvement program, or authorized by special or local act for a county watershed improvement program, may be expended for such maintenance of works and projects, as well as structures, if the board of county commissioners or other watershed governing body after a public hearing determines that the proceeds should be so expended. Notice of such hearing shall be published as provided for notices under Article 2 of General Statutes Chapter 139.

(c) The proceeds of any tax hereafter approved by the voters of a county for a watershed improvement program may be expended for such maintenance of works and projects, as well as structures, with or without the holding of a public hearing as designated by subsection (b) of this section, even though any election procedures preliminary to the vote approving the tax may have been initiated prior to the ratification of this section.

(d) No action based on the alleged invalidity of the expenditures herein confirmed or of the use of tax proceeds herein authorized shall lie after January 1, 1970, to enjoin or contest any such expenditure or any such use of tax proceeds. (1969, c. 711, s. 1.)

§ 139-9. Adoption of land-use regulations. — The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving the soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum. The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance number . . . ., prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance number . . . ., prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations, governing the conduct thereof, and shall publish the result thereof. All occupiers of lands within the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The supervisors shall not have authority to enact such proposed ordinance into law unless at least two thirds of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a two thirds of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.
(2) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation.
(3) Specifications of cropping programs and tillage practices to be observed.
(4) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on.
(5) Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in G.S. 139-2.

The regulations shall be uniform, throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of lands lying within the district. (1937, c. 393, s. 9.)

§ 139-10. Enforcement of land-use regulations. — The supervisors shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of G.S. 139-9 are being observed. The supervisors are further authorized to provide by ordinance that any land occupier who shall sustain damages from any violation of such regulations by any other land occupier may recover damages at law from such other land occupier for such violation. (1937, c. 393, s. 10.)

§ 139-11. Nonobservance of prescribed regulations; performance of work under the regulations by the supervisors. — Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of G.S. 139-9 are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and its interfering with the prevention of control of erosion on other lands within the district, the supervisors may present to the superior court for the county or counties within which the lands of the defendant lie a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform, the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the cost and expenses thereof, with interest, from the occupier of such land. Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may dismiss the petition, or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per centum (5%) per annum, from the occupier of such lands.

The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgement therefor with interest. The court shall have jurisdiction to enter judgement for the amount of such costs and expenses, with interest at the rate of five per centum (5%) per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. This judgement, when filed in accordance with the provisions of G.S. 1-234, shall constitute a lien upon such lands. (1937, c. 393, s. 11.)

§ 139-12. Cooperation between districts. — The supervisors of any two or more districts organized under the provisions of this Chapter may cooperate with one another in the exercise of any or all powers conferred in this Chapter. (1937, c. 393, s. 12.)

§ 139-13. Discontinuance of districts. — At any time after five years after the organization of a district under the provisions of this Chapter, any 25 occupiers of land lying within the boundaries of such districts may file a petition with the Soil and Water Conservation Commission praying that the operations of the district be terminated and the existence of the district discontinued. The Commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof. Within 60 days after such a petition has been received by the Commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the .... (name of the soil and water conservation district to be here inserted)" shall appear with a square before each proposition and a direction to insert an X mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

The Department of Natural Resources and Community Development shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the Commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district. In making such determination the Commission shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in G.S. 139-2: Provided, however, that the Commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

Upon receipt from the Soil and Water Conservation Commission of a certification that the Commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the State treasury. The supervisors shall thereupon file an application, duly verified, with the Secretary of State for the discontinuance of such district, and shall transmit with such application the certificates of the Soil and Water Conservation Commission setting forth the determination of the Commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of State shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The Soil and Water Conservation Commission shall be substituted for the district or supervisors as party to such contracts. The Commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of G.S. 139-11, nor the pendency of any action instituted under the provisions of such section, and the Commission shall succeed to all the rights and obligations of the district or supervisors as to such liens and actions.

The Soil and Water Conservation Commission shall not entertain petitions for the discontinuance of any district nor conduct referenda upon such petitions, nor make determinations pursuant to such petitions, in accordance with the provisions of this Chapter, more often than once in five years. (1937, c. 393, s. 13; 1973, c. 1262, s. 38; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the second paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 139-14. Dividing large districts. — Whenever the Soil and Water Conservation Commission shall receive a petition from any board of district supervisors signed by all supervisors of such district, the Commission shall have the authority to divide such district into two or more districts. The governing bodies of the resulting districts shall be composed of supervisors in the same manner and in the same number as is provided in G.S. 139-6 and 139-7. Upon the creating of new districts through dividing an existing district under the provisions of this section, the Commission shall appoint all district supervisors necessary to give such district its full quota of supervisors who shall serve until regular supervisors are elected or appointed, as the case may be, at the time of the next regular election of supervisors. The Commission shall assign a name to each district resulting from the division of the district under the provisions of this section and do all other things necessary to complete the organization of such new districts and place them on an operating basis. (1947, c. 131, s. 8; 1973, c. 1262, s. 38.)

§ 139-15. "County committeeman" construed to mean "county supervisor"; powers and duties. — Wherever the words "county committeeman" or "county committeemen" appear in this Chapter, the same shall be construed to mean "county supervisor" or "county supervisors"; and each such county committeeman or county supervisor shall receive the same compensation and have and exercise the same rights, powers, duties, responsibilities and voting privileges granted to or imposed upon district supervisors in respect to soil conservation activities under the provisions of this Chapter. (1949, c. 268, s. 2.)

ARTICLE 2.

Watershed Improvement Districts.

§ 139-16. Establishment within soil conservation district authorized. — Watershed improvement districts may be established within one or more soil conservation districts or within and without such districts, to the extent permitted by G.S. 139-18(a), in accordance with the provisions of this Article; provided that no watershed improvement district may be established on or after January 1, 1972. (1959, c. 781, s. 8; 1971, c. 1138, s. 1.)

§ 139-17. Petition for establishment; what to set forth. — Any 100 owners of land lying within the limits of a proposed watershed improvement district, or a majority of such owners if their total number be less than 200, may file a petition with the supervisors of the soil conservation district in which the proposed watershed improvement district is situated asking that a watershed improvement district be organized to function in the area described in the petition. Any petition circulated in person by an official or employee of the United States Soil Conservation Service shall be void. Each owner of an undivided interest in real property located within the proposed watershed district shall have the right to sign petitions under this section and subsection (c) of G.S. 139-21, to register and vote under G.S. 139-18 and otherwise exercise any right granted owners of land under this Article. The petition shall set forth:

(1) The proposed name of the watershed improvement district;

(2) That the said district appears to hold promise of administrative, engineering and economic feasibility, and the reasons therefor;

(3) A description of the area proposed to be organized as a watershed improvement district, and the names and addresses of those landowners therein who are known to petitioners. The description shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land. In the discretion of the petitioners, the boundaries may be described by any of the following methods or any combination thereof: by reference to a map; by metes and bounds; by general description referring to natural boundaries, or to boundaries of existing political subdivisions or municipalities, or to boundaries of particular tracts or parcels of land;

(4) That the area described in the petition consists of contiguous territory and in what watershed or watersheds such area lies;

(5) To the extent feasible, a description of the proposed work or works of improvement for the control and prevention of soil erosion, flood prevention, or the conservation, utilization, and disposal of water and development of water resources, contemplated for said district, together with an explanation of the effect which said work or works of improvement will have upon the lands of the various landowners in the proposed district;

(6) That none of the land within the proposed watershed improvement district lies within the boundaries of any other watershed improvement district;

(7) A request that the area described in the petition be organized as a watershed improvement district; and

(8) The maximum rate of initial annual assessment proposed for levy against specially benefited lands of the proposed district, not in excess of the maximum annual assessment rate provided in G.S. 139-26. (1959, c. 781, s. 8; 1961, c. 746, s. 3; 1963, c. 1151, s. 1.)

§ 139-18. Notice and hearing on petition; determination of need for district and defining boundaries. — (a) Within 30 days after such petition has been filed with the supervisors of the soil and water conservation district, they shall set the time and place for a public hearing upon the practicability and feasibility of creating the proposed watershed improvement district, and shall publish notice thereof once a week for two consecutive weeks. All owners of land within the proposed watershed improvement district and all other interested parties shall have the right to attend such a hearing and to be heard and may register their name and address with the supervisor if they want the notice provided for under G.S. 139-18(m) sent to them. During the hearings or thereafter the supervisors may recommend that the purposes of the proposed district or its proposed boundaries be changed. The supervisors may amend the proposed boundaries to include within such boundaries lands which lie within the watershed of the proposed district but do not lie within an existing soil and water Conservation District, if the owner of such lands consents to their inclusion.

(b) In passing upon the petition the supervisors shall consider whether:

(1) The area proposed to be organized as a district consists of contiguous territory none of which lies in any other watershed improvement district. It is the intention of the General Assembly that the territory of a watershed district shall normally comprise all or part of a single watershed, or of two or more watersheds tributary to one of the major drainage basins of the State, but exceptions to this policy may be permitted in appropriate cases, but it is not the intention of the General Assembly to authorize hereby the diversion of water from one stream or watershed to another.

(2) Any land or structure has been included in the proposed district which cannot be served or benefited by the proposed work or works of improvement and which could be excluded from the boundaries of the district without substantially impairing the effective purpose of the proposed work or works of improvement; and

(3) The proposed district appears to hold promise of administrative, engineering and economic feasibility.

If, in the judgment of the supervisors there is substantial compliance with these requirements, the supervisors shall issue an order setting dates and places for a referendum (and for registration of voters therefor) to be held, after publication of the order as herein provided, among the landowners of the proposed district in order to assist the supervisors in determining the administrative and economic feasibility of creating the proposed district. The supervisors shall publish such order once a week for two successive weeks in the manner provided by this Article for publication of notices. They shall also send to the board of county commissioners of each county wherein any part of the proposed district lies a copy of the order, together with a request that the said board or boards conduct the referendum within their respective counties on the date set out in the order, and a cash or certified check deposit furnished by the petitioners and sufficient in the judgment of said board or boards to defray the expenses of conducting the referendum within their respective counties. If (in connection with a district that lies in more than one county) the supervisors determine that only a single voting place shall be used or that all voting places should be located within one county, the said order and request shall be sent only to the board of county commissioners of the county containing such voting place or places.

(c) The registration and voting dates and places shall be set by the supervisors and after consulting with the said board or boards of county commissioners. The referendum may be held on any day (Sunday excluded) during the week following the last day for registration as hereafter provided for, but the county commissioners shall not be required to conduct the referendum during any 30-day period immediately preceding nor during any 10-day period immediately following a county-wide election. Any such board of county commissioners may require its county board of elections or any other designated persons to conduct on its behalf the said referendum, and the term "county election authority" as used in this section means whatever authority shall be designated by the board of county commissioners to conduct the referendum.

(d) All owners of land lying within the boundaries of the proposed watershed improvement district, and only such owners, shall be eligible to register and vote in the referendum. The registration shall be conducted at one or more registration places within the proposed district, as established by the supervisors. The supervisors shall furnish a registration book for each registration place, and shall appoint for each registration place at least two registrars to register the voters. One or more supervisors may be assigned to perform the function of registrar. If the proposed district lies within more than one county, separate registration books shall be supplied and kept for each such county, regardless of the number of registration or voting places. Each registrar before entering upon the discharge of his duties shall take an oath before a magistrate or some other person authorized to administer oaths, that he will support the Constitution of the United States and the Constitution of North Carolina not inconsistent therewith and that he will honestly and impartially discharge his duties in registering the voters. The registration book shall be opened for the registration of voters at nine o'clock A.M. on the second Saturday before the referendum, and closed at sunset on the Saturday before the election. On each such Saturday, the registrars shall attend their respective registration places and keep open the registration books between the hours of nine o'clock A.M. and sunset for the registration of voters. If any person shall give satisfactory evidence to the registrars that he has become qualified to register and vote after the time for registration has expired, he shall be allowed to register on that date and his name shall be inserted in the registration book, except that no registration shall be allowed on the day of the referendum.

(e) Each applicant for registration shall be sworn before being registered, shall state his name and place of residence, shall describe as accurately as possible the land he owns that lies within the boundaries of the proposed district, and shall state his interest in such land. The oath to be taken shall be as follows:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of North Carolina not inconsistent therewith, and that I am the owner of land lying within the boundary of the proposed (here insert name of proposed district) watershed improvement district. So help me, God."

The registrar, if in doubt as to the right of the applicant to register, may require other evidence satisfactory to him as to qualifications of the applicant. Thereupon, if the applicant be found to be qualified to be registered, the registrar shall register the applicant and record his name, place of residence, and a description of the land he owns that lies within the boundaries of the proposed district.

(f) On the second Saturday of the registration period, from the hour of nine A.M. until sunset, the registration books shall be open for inspection by the landowners of the proposed district, and any of said landowners shall be allowed to object to the name of any person appearing on the books. In case of any such objection, the registrars shall enter on their books opposite the name of the person so objected to, the word "challenged," and shall appoint a time and place, before the referendum date, when they shall hear and decide said objection, giving personal notice of such challenge to the voters so objected to. If for any cause personal notice cannot be given, then it shall be sufficient notice to leave a copy thereof at his residence. Nothing in this subsection shall prohibit any landowner from challenging or objecting to the name of any person registered or offering to register at any time other than that above specified. If any person so challenged or objected to shall be found not duly qualified, the registrars shall erase his name from the books.

(g) When any person is challenged, the registrars shall explain to him the qualifications of a voter in the referendum, and shall examine him as to his qualifications. If the person insists that he is qualified and proves his identity with the person in whose name he offers to vote, and his continued ownership of qualifying property since his name was placed on the registration book, as the case may be, by the testimony under oath of at least one person qualified to vote in the referendum, one of the registrars shall tender him the following oath or affirmation:

"You do solemnly swear (or affirm) that you are a citizen of the United States, that your name is (here insert name given), that in such name you were duly registered as a voter of the proposed (here insert name of proposed district) watershed improvement district, and that you are the owner of lands that lie within the boundaries of the proposed district. So help me, God."

If he refuses to take such oath or affirmation when tendered, his vote shall be rejected. If, however, he does take the oath or affirmation when tendered, his vote shall be received; provided, that after such oath or affirmation shall have been taken, the registrars may nevertheless refuse to permit such person to vote, unless they be satisfied that he is a legal voter; and they are hereby authorized to administer the necessary oaths or affirmations to all witnesses brought before them to testify to the qualifications of a person offering to vote. Whenever any such person's vote shall be received, after having taken the oath or affirmation prescribed in this section, one of the registrars shall write in the registration book, at the end of such person's name, the word "sworn." The same powers as to the administration of oaths and affirmations and the examination of witnesses, as in this section granted to registrars, may be exercised by the registrars in all cases where the names of persons registered or offering to register are objected to.

(h) After all challenges have been heard and decided, and before the day of the referendum, the registrars shall deliver the registration books to the county election authorities responsible for conducting the referendum. The supervisors of the soil conservation district shall cause to be printed or otherwise duplicated ballots for the referendum in substantially the form set forth in G.S. 139-5(c), but the watershed improvement district shall be substituted by name for the soil conservation district. Not later than the day before the referendum, the supervisors shall cause to be delivered to the county election authorities a number of said ballots equal to five percent (5%) greater than the number of persons registered to vote therein. The supervisors shall appoint one registrar from each registration place to attend the referendum as a poll watcher and to assist the election authorities in identifying the voters.

(i) The county election authorities shall conduct the referendum at the date and place or places set out in the order published pursuant to subsection (d) of this section. They shall open the polls and superintend the same until the close of elections, shall keep pollbooks in which shall be entered the name of every person who shall vote, and at the close of the referendum they shall certify the same over their proper signatures and deposit them with the supervisors of the soil conservation district. The polls shall open and close at the same hours as provided for primary and general elections by Chapter 163 of the General Statutes. At the end of the referendum at each voting place the polls shall be closed, the ballot boxes opened, and the ballots counted by or under the supervision of the county election authorities in the manner provided for with respect to general elections by Chapter 163 of the General Statutes.

(j) If there be only one voting place the county election authorities shall immediately after the counting of the ballots form a board of canvassers and, in the presence of such voters as choose to attend, shall canvass and judicially determine the results.

If there be more than one voting place the county election authorities at each voting place shall elect one of their members to attend the meeting of the board of canvassers as a member thereof. When the results of the counting of the ballots shall have been ascertained, such results shall be embodied in a duplicate statement, one copy of which shall be placed in a sealed envelope and delivered to the official elected to attend the meeting of the board of canvassers, and the other copy of which shall be mailed by another county election official to the board of supervisors of the soil conservation district. The members of the board of canvassers so appointed shall meet at 11 A.M. on the second day after the election at the county courthouse of the county wherein the largest portion of the proposed district lies, as determined by the said board of supervisors. A majority of the board of canvassers shall constitute a quorum, and such board shall organize by the election of one of its number as chairman and one as secretary. Any member of such board who shall fail to deliver the certified returns from his voting place by 12 noon on the day of such board meeting shall be guilty of a misdemeanor, unless for illness or good cause shown for such failure. If any returns have not been received by 12 noon on the day of the meeting, or if any returns are incomplete or defective, it may dispatch an officer to the residence of such officials for the purpose of securing the proper returns for such voting place. The board of canvassers at its meeting shall in the presence of such voters as choose to attend, open, canvass, and judicially determine the results.

Whether there be one or more than one voting place, the board of canvassers after judicially determining the results shall make abstracts stating the number of legal ballots cast in each voting place and the number of votes cast for and against creation of the watershed improvement district, and shall sign the same in duplicate with its certificate as to the correctness of the abstracts. It shall have power to pass upon judicially all the votes relative to the election and judicially determine and declare the results of the same; to send for papers and persons and examine the latter upon oath; and to pass upon the legality of any disputed ballots transmitted to it by any election official. The board of canvassers shall transmit one copy of the certified abstract of the results to the Soil and Water Conservation Commission, and shall file the other copy with the supervisors of the soil and water conservation district.

(k) The board of county commissioners shall apply the deposit heretofore provided for toward defraying the costs of the election. If there be any excess of such deposit remaining after all such costs have been defrayed, the board shall return the balance thereof remaining to the petitioners. If the deposit shall prove insufficient to defray all such costs, the petitioners shall pay over sufficient funds to cover any deficit therein within seven days after they have been notified by the board of such deficit.

(l) The results of the referendum shall be considered by the supervisors in determining whether it is administratively and economically feasible to create the district. The supervisors shall not approve the petition unless a majority of the voters in the referendum, and also a majority in number of the signers of the petition, voted in favor of the creation of the district, and (such requirement being met) shall approve the petition if, in their judgment, the district appears to hold promise of administrative and economic feasibility.

(m) After the completion of the referendum the supervisors shall enter a final order approving or disapproving the petition, and shall record such order in their official minutes. The supervisors shall by personal service or registered mail serve a copy of the final order upon every person who attended the hearings and signed a roster provided for that purpose, and shall publish notice of such order once a week for two successive weeks. Any order of approval shall declare the district to be duly organized; shall specifically define the boundaries of the district, and shall be certified by the supervisors together with a certified copy of the petition for establishment of the district, to the Soil and Water Conservation Commission, the Environmental Management Commission and the clerk of the superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings docket. The boundary definition contained in said order shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land, and said boundaries may be defined by any of the methods permitted in G.S. 139-17(3) for description of boundaries. If the final order makes no change in the area proposed to be organized in the petition, a reference to a map or description of said area contained in the petition shall be a sufficient boundary definition for purposes of the order. If a petition is disapproved, subsequent petitions covering the same or substantially the same territory may be filed after six months have elapsed from the date of the order of disapproval, and new proceedings held thereon.

(n) (1) Corporations and associations owning property located within a proposed district shall be entitled to register and vote in referenda held pursuant to this section through representatives designated by them. Persons owning property as trustees, guardians, executors, administrators, or in other fiduciary capacities (hereinafter collectively referred to as "fiduciaries"), such property being located within a proposed district, shall also be entitled to register and vote in such referenda.

(2) In lieu of meeting the requirements of subsection (e) of this section a fiduciary or a voting representative of a corporation or association shall state his name and place of residence; shall describe as accurately as possible the land, on behalf of which he seeks to register, that lies within the boundaries of the proposed district; shall show satisfactory evidence of his authority to register on behalf of such corporation or association, or of his fiduciary status; and shall state, as the case may be, his interest as a fiduciary or the interest of the corporation or association, in such land.

(3) Fiduciaries shall be subject to the same oaths as required of other prospective voters under subsections (e) and (g) of this section. The oaths to be taken by the voting representatives of a corporation or association shall be as follows:

Under subsection (e) —

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of North Carolina not inconsistent therewith, and that I am the duly designated voting representative of the (here name corporation or association) which is the owner of land lying within the boundary of the proposed (here give name of proposed district) watershed improvement district. So help me, God."

Under subsection (g) —

"You do solemnly swear (or affirm) that you are a citizen of the United States, that your name is (here insert name given), that in such name you were duly registered as a designated voting representative of the (here name corporation or association) to vote upon the proposed (here insert name of proposed district) watershed improvement district, and that such (corporation) (association) is the owner of lands that lie within the boundaries of the proposed district. So help you, God." (1959, c. 781, s. 8; 1961, c. 746, s. 4; 1963, c. 918, s. 2; 1973, c. 108, s. 86; c. 1262, s. 38.)

§ 139-19. Establishment of watershed improvement district situated in more than one soil conservation district. — If a proposed watershed improvement district is situated in more than one soil conservation district, copies of the petition shall be presented to the supervisors of all the soil conservation districts in which any part of such proposed watershed improvement district is situated, and the supervisors of all such soil conservation districts shall act jointly as a board of supervisors with respect to all matters concerning such watershed inprovement district, including its creation. Such watershed improvement district shall be organized in like manner and shall have the same powers and duties as a watershed improvement district situated entirely in one soil conservation district. (1959, c. 781, s. 8.)

§ 139-19.1. Supervisors of multi-county soil and water conservation district may delegate powers. — The supervisors of any multi-county soil and water conservation district may delegate to a county soil conservation committee of the district any of their powers, duties or functions respecting any watershed improvement district or proposed watershed improvement district lying wholly within the boundaries of the county represented by said committee. (1961, c. 746, s. 5.)

§ 139-20. Inclusion of additional area. — Petitions for including additional land within a duly created and existing watershed improvement district may be filed with the supervisors of the soil conservation district and in such cases the provisions hereof in respect to the creation of watershed improvement districts shall be observed. (1959, c. 781, s. 8.)

§ 139-20.1. Validation of creation of certain districts. — All actions had and taken prior to March 1, 1963, by supervisors of soil conservation districts, boards of county commissioners, boards of election, registrars, or other officials in the course of attempting to form and create watershed improvement districts, are hereby ratified, approved, validated and confirmed, as if accomplished in full and complete compliance with the law, and any watershed improvement district with respect to which formation may have been attempted and completed prior to March 1, 1963, is hereby declared to be lawfully formed, created, and in all respects constituted a legal and valid watershed improvement district. (1963, c. 918, s. 1.)

§ 139-21. Board of trustees; selection and tenure. — (a) Each watershed improvement district shall be governed by a board of trustees to be composed of three members, all of whom shall be residents of the district, and shall be selected in the manner provided in this section.

(b) Within 30 days after they have entered a final order under G.S. 139-18 declaring the organization of a watershed improvement district, the soil conservation district supervisors shall appoint an interim board of trustees for the watershed improvement district to serve until their successors are elected and qualified. Such interim board shall have all of the powers and duties of, and be subject to all of the provisions of this Chapter respecting, the board of trustees whose election is provided for in this section.

(c) At the next general election occurring not less than 180 days after the appointment of said interim board, there shall be elected three members of the board of trustees of the watershed improvement district. At each succeeding general election one member of said board shall be elected.

Nominations in all cases shall be by written petition signed by any 25 owners of land lying within said district, or one third of such owners if their total number be less than 75. Such petitions shall be presented, not later than 120 days before the date of the general election, to the supervisors of the soil conservation district or districts within which the watershed improvement district lies. It shall be the duty of the said supervisors to examine said petitions and determine their validity. Not later than 90 days before the date of the general election the said supervisors shall certify to the boards of election of each county wherein any part of the watershed improvement district lies the names of the candidates thus nominated, together with a request that these candidates be presented to the voters at the next general election.

All qualified voters residing within the watershed improvement district shall be eligible to register and vote for said trustees. For such election the board of elections of each such county, at county expense, shall provide polling places in said district and in their respective counties, and shall provide for a registrar or registrars and judges of election at each said polling place. In their discretion the said board or boards of elections may designate the general election polling places and election officials as polling places and election officials for such election (for registrations as well as for elections). The said board or boards of elections shall provide for the printing and distribution of ballots in the same way they provide ballots for county and precinct offices. Said ballots shall be printed separately, shall contain the names of all nominees certified to the board of elections, and shall carry the facsimile signature of the chairman of the county board of elections. The ballots shall indicate the title and term of the office being voted on, shall contain an instruction as to the number of candidates to be voted for and shall state that if the voter tears or defaces or wrongly marks a ballot he may return it and get another. Write-in votes shall be treated as provided for write-in votes in the general election under subdivision three of G.S. 163-175. The said board or boards of elections shall certify the results of the elections to the supervisors of the soil conservation district or districts within which the watershed improvement district lies.

The board of elections of each county wherein any part of the watershed improvement district lies shall provide for a new registration of all qualified voters residing in said district and in their respective counties. Said board or boards shall give notice thereof once a week for two consecutive weeks by advertisement in a newspaper of general circulation published in the district and in their respective counties or, if there is no such newspaper so published, then in a newspaper of general circulation in the district and in their respective counties. The first of such notices shall be published at least 30 days in advance of the first day for such registration. Such notices shall specify the dates, times and places for registration and for challenges to be received. Each registrar shall be furnished with a separate registration book for such watershed improvement district registration. The period for registration and the times when the registrars shall attend the polling places with the registration books shall be the same as those provided for the general election in G.S. 163-31. Challenges may be made and shall be heard and decided at the polling places, and at the times and in the manner provided for the general election in G.S. 163-78 to 163-80.

(d) Of the trustees first elected, the one receiving the largest number of votes shall serve a term of six years, the one receiving the second largest number of votes shall serve a term of four years, and the one receiving the third largest number of votes shall serve a term of two years. Their successors in every case shall serve terms of six years.

(e) Members elected to the board of trustees shall qualify and enter upon the duties of their offices on the first Monday of December next succeeding their election. Appointed members shall qualify and enter upon the duties of the offices not later than the second Monday next succeeding their appointment. All members shall take the oath of office prescribed by the State Constitution before the clerk of the superior court, or some judge, or magistrate or other person qualified by law to administer oaths.

(f) Vacancies in the membership of the board of trustees occurring otherwise than by expiration of term shall be filled by appointment to the unexpired term by the soil conservation district supervisors. (1959, c. 781, s. 8; 1963, c. 1026, s. 1; 1973, c. 108, s. 87.)

Editor's Note. — The references to §§ 163-31, 163-78 to 163-80 and 163-175 in subsection (c) of this section are to Chapter 163 before its revision in 1967. For present provisions as to registration of voters, see §§ 163-65 to 163-80. For present provisions as to challenges, see §§ 163-84 to 163-90. For present provisions as to write-in votes, see § 163-151, subdivision (2) (c).

§ 139-22. Organization and compensation of board. — (a) The interim board of trustees at its first meeting shall select a chairman, vice-chairman and secretary-treasurer to serve until their successors are selected. The elected board at its first meeting shall select corresponding officers to serve two-year terms. All official acts done by the board shall be entered in a book of minutes to be kept by the secretary-treasurer. A majority of the membership of the board shall constitute a quorum. The board shall meet in regular session at least quarterly and may meet specially upon the call of the chairman or any two members, and upon at least three days' notice of the time, place and purpose of the meeting.

(b) A trustee shall receive a per diem allowance of seven dollars ($7.00) and necessary expenses while engaged in the discharge of his official duties as a member of the governing board of the district. The claim of any trustee for per diem and expenses for any duty except attendance upon a meeting of the board, shall be paid only after approval of the board. (1959, c. 781, s. 8; 1963, c. 1026, s. 2.)

§ 139-23. Officers, agents and employees; surety bonds; annual audit. — The trustees may employ such officers, agents, consultants, and other employees as they may require; shall determine their qualifications, duties and compensation; shall provide for the execution of surety bonds for the secretary-treasurer and such other officers, agents and employees as shall be entrusted with funds or property of the watershed improvement district; and shall provide for the making and publication of an annual audit of the accounts of receipts and disbursements of the watershed improvement district. (1959, c. 781, s. 8.)

§ 139-24. Status and general powers of district; power to levy assessment. — A watershed improvement district organized under the provisions of this Article shall constitute a political subdivision of this State, and a public body corporate and politic, exercising public powers, and such watershed improvement district shall have all of the powers of the soil conservation district or districts in which the watershed improvement district is situated, and in addition thereto shall have the authority to levy and the county tax collector or collectors shall collect an assessment as hereinafter provided, to be used for the purposes for which the watershed improvement district was created and for the operation and maintenance thereof. (1959, c. 781, s. 8.)

Local Modification. — Davie: 1961, c. 794, s. 1; Iredell: 1961, c. 794, s. 1; 1963, c. 955; McDowell: 1963, c. 637; Onslow: 1967, c. 725, s. 2; Polk: 1961, c. 794, s. 1; Rowan: 1961, c. 794, s. 1; 1963, c. 109; Union: 1961, c. 794, s. 1; 1963, c. 955; 1965, c. 19, s. 2; Wake, Yadkin: 1961, c. 794, s. 1.

§ 139-25. Benefit assessments to defray district expenses; classification of land according to benefits. — (a) The expenses of a watershed improvement district under this Chapter shall be assessed in the manner hereafter provided against lands specially benefited by the activities of the district.

(b) As soon as practicable after the organization of a district and the formulation of plans for construction of works of improvement, the trustees shall examine and classify the lands in the district (and from time to time may reclassify them) according to the relative benefits they will receive from the activities of the district. The lands may be classified into as many as five classes, marked "Class A," "Class B," etc. In making such classifications the trustees shall consider the fertility of the soil, the proximity of the land to the watercourse (or, in the case of drainage benefits, its proximity to the ditch or a natural outlet), the degree of wetness on the land, the location of the land relative to existing or proposed works of improvement of the district, its susceptibility to damage from floods or erosion, and other factors evidencing anticipated benefits or lack thereof to particular lands.

The holdings of any one landowner need not necessarily be all in one class, but the number of acres in each class shall be ascertained and listed, though its boundary need not be marked on the ground, but shall be shown on a separate map of the district designated "Classification Map."

The total number of acres owned by one person in each class and the number of acres benefited shall be determined. The total number of acres benefited in each class in the entire district shall be set forth in tabulated form. The scale of assessment upon the several classes of land shall be determined by the trustees.

(c) Following completion of such classification the trustees shall publish at least once a week for two successive weeks a notice of the time and place for a public hearing to hear the objections of all interested persons to the classification. In addition, the trustees shall, with respect to any land on which the scale of assessment calls for a benefit assessment, address and mail a copy of the notice of classification to the owner, and at the address, as shown on the tax records of the county in which the lands are located. As to the owner of land classified and scaled for no benefit assessments, notice other than publication shall not be required. The certificate of the person designated to mail the notices that such notices were mailed, giving the mailing date, shall be conclusive in the absence of fraud. The hearing shall be held not earlier than 10 days from the first publication of the notice or the certified mailing date of the notices whichever occurred last. The notice shall refer to the district by name, describe generally the property included in the classification, set forth the scale of assessment upon the various classes of land, state where and when the classification will be available for inspection, and state that all objections must be made in writing, signed in person or by attorney, and filed with the secretary-treasurer of the district at or before the time of the hearing, and that any objections not so made shall be waived. At the hearing or some other time to which it may be adjourned the trustees shall consider objections made in compliance with the above requirements. If any objection is made and not sustained by the trustees, their action thereupon shall be the final adjudication of the issues presented, subject to appeal pursuant to subsection (d) of G.S. 139-26.

(d) The proceedings for a reclassification shall be in all respects as in the case of the original classification. (1959, c. 781, s. 8; 1963, c. 1025, s. 1.)

§ 139-26. Estimate of expenses; filing and confirmation of initial assessment roll; subsequent assessments. — (a) The trustees shall estimate: The total or amortized portion of capital costs, including incidental expenses and debt service charges, of the contemplated works of improvement to be completed, for which the district shall be obligated during the assessment period; and the amount of all other expenses of the district, including the expenses of administering the district and maintaining the works of improvement. Initially such estimate will include all such costs and expenses which have accrued or will accrue prior to the beginning of the first fiscal year of the district in which assessments are turned over to the county authorities for collection, and that will accrue during the first and the two succeeding fiscal years. (The fiscal year of the district shall begin on July 1 and end on June 30.) The trustees shall thereupon make an assessment of the sum of the estimate calculated pursuant to the above. For that purpose the trustees shall make out an assessment roll in which shall be entered the names of the landowners assessed so far as the same can be ascertained and the amounts assessed against them respectively, with a brief description of the parcels or tracts of land assessed. The assessment roll shall indicate the amount of assessment installments which shall be paid by landowners electing to pay the assessment in installments.

(b) Immediately after such assessment roll has been completed the trustees shall publish at least once a week for two consecutive weeks a notice of the completion of the assessment roll. Such notice shall describe the proposed improvement in general terms, state where and when the assessment roll will be available for inspection, and specify the time and place for a meeting of the trustees to hear objections to the assessments. In addition, the trustees shall, with respect to land against which an assessment has been made, mail a copy of the notice to the owner, and at the address, as shown on the tax records. The certificates of the person designated to mail the notices that such notices were mailed, giving the mailing date, shall be conclusive in the absence of fraud. The meeting shall be held not earlier than 10 days from the first publication of the notice or the certified mailing date of the notices whichever occurred last.

(c) At such meeting the trustees shall hear the objections of all interested persons who appear and offer proof in relation thereto. The trustees shall either annul or sustain or modify in whole or in part the prima facie assessment as indicated on said roll, either by confirming the prima facie assessment against any or all tracts or parcels described therein, or by canceling, increasing or reducing the same according to the special benefits which the trustees decide each tract or parcel has received or will receive on account of the activities of the district during the period of the assessment. If any property subject to assessment has been omitted from the roll or if the prima facie assessment has not been made against it, the trustees may place on the roll an apportionment against such property. The trustees may thereupon confirm the roll, but shall not confirm any assessment in excess of the special benefits to the property assessed and the assessments so confirmed shall be in proportion to the special benefits. Whenever the trustees shall confirm an assessment roll the secretary-treasurer shall enter in the minute books of the district the date, hour and minute of such confirmation, and he shall immediately cause the assessment roll to be filed with the tax collector of the county wherein the land is located and from that time the assessment shall constitute a lien on the real property against which the same is assessed. Subsequent assessments levied in accordance with this Article shall be a lien against real property from the date of filing of said assessment.

(d) If the owner of, or any person interested in, any land assessed or classified is dissatisfied with the amount of the assessment under this section or with the classification under G.S. 139-25, he may give written notice to the secretary-treasurer of the district within 10 days after confirmation of the assessment roll or after the last day of the classification hearing, respectively, that he takes an appeal to the Environmental Management Commission. Within 20 days after such confirmation or after the last day of the classification hearing, respectively, he must file with the Environmental Management Commission and the secretary-treasurer of the district a brief statement of the grounds for his dissatisfaction with the ruling of the trustees. The Environmental Management Commission shall set a date for a hearing not more than 90 days from the date of the filing of the statement. At said hearing, evidence shall be taken by the Environmental Management Commission from the district and the landowner, both of whom shall have the right to be represented by counsel. After hearing the evidence, the Environmental Management Commission may affirm, overrule or modify the ruling of the trustees and may tax the cost of the hearing against the losing party. Either party may appeal from the ruling of the Environmental Management Commission to the superior court of the county wherein the land is located for trial de novo. The appeal from the trustees or the Environmental Management Commission shall not delay or stop the operation of the district or any of its works of improvement. The Environmental Management Commission in order to fulfill the duties herein granted shall have the powers given it under G.S. 139-35(e). The Environmental Management Commission may delegate to one of its members or to a deputy the function of holding any or all hearings which it is required to hold under the provisions of this subsection.

(e) The trustees may correct, cancel or remit any assessment, and may remit, cancel or adjust the interest or penalties thereon. The trustees have the power, when in their judgment there is any irregularity, omission, error or lack of jurisdiction in any of the proceedings relating thereto to set aside the whole of the assessment made by them, and thereupon to make a reassessment. The trustees' power of correction, cancellation, remission or adjustment of any particular benefit assessment or of the interest or penalty thereon, or of setting aside a general assessment, shall not limit or abridge the duty and responsibility hereby imposed upon the trustees to preserve the fiscal integrity of the district, and to provide by reassessment or otherwise, for the repayment of all principal, interest and other debt service charges on assessment bonds, notices, or other evidence of indebtedness issued by the district to pay for works of improvement or any other expenses of the district. The proceedings shall be in all respects as in the case of the original assessment, and the reassessment shall have the same force as if it had originally been properly made. In the event of a reassessment the trustees may, if necessary, postpone the dates for payment of assessments and installments and for performance of other acts required to be performed on or before designated dates.

(f) No change of ownership of any property or interest therein after the last day of the classification hearing shall in any manner affect subsequent proceedings, and the works of improvement may be completed and assessments made therefor as if there had been no change of ownership.

(g) The following provisions of the General Statutes concerning municipal special assessments with modifications as specified, shall apply to assessments by watershed improvements districts:

G.S. 160-95 to 160-97, which relate to assessments in case of tenants for life or years;

G.S. 160-98, which relates to liens in favor of cotenants or joint tenants paying assessments;

G.S. 160-101, which relates to apportionment of assessments where property has been or is about to be subdivided (except that for "governing body," read "trustees").

(h) Subsequent to the initial assessment the trustees may annually, biennially, or triennially, at their discretion, levy additional assessments to meet: The total, or amortized portion, of capital costs, including debt service charges consisting of principal, interest, and other charges on borrowed funds to be paid during the assessment period, and further including costs and expenses incidental to the construction of contemplated additional works of improvement to be completed during the assessment period; and all other expenses of the district, including the expenses of administering the district, maintaining all works of improvement, and interest on borrowed funds, that will accrue during the ensuing fiscal year, biennium or triennium, as the case may be.

The trustees shall prepare estimates, make out the assessment roll, hold hearings and in all other respects proceed as in the case of the initial assessment, except that:

(1) The estimate shall be prepared on or before May 20 preceding the fiscal year during which the assessment (or the first installment thereof) shall come due, but failure to comply with this requirement shall not affect the validity of subsequent proceedings;

(2) The period covered by the estimate of "all other expenses" shall be the succeeding fiscal year, biennium or triennium, as the case may be; and

(3) The assessment installments, if any, to be indicated on the assessment roll shall be those to be paid during each year of the fiscal biennium or triennium, as the case may be, by landowners electing to pay in installments.

(i) The assessment rate on any assessment roll shall not exceed a maximum annual rate of seven dollars ($7.00) per acre. (1959, c. 781, s. 8; 1963, c. 1025, s. 2; c. 1151, s. 2; c. 1228, ss. 1-4; 1973, c. 1262, s. 38.)

Editor's Note. — Sections 160-95 to 160-97, 160-98 and 160-101, referred to in subsection (g) of this section, were repealed by Session Laws 1973, c. 698. For present provisions as to special assessments, see §§ 160A-216 to 160A-238.

§ 139-27. Collection and payment of assessments; expenditure of proceeds thereof and of other district funds. — (a) (1) The landowner against whom an assessment is made shall have the option of paying the entire assessment, if he so elects and gives written notice accordingly to the secretary-treasurer of the district within 15 days after the confirmation of the assessment roll and upon his failure to so notify the district, he shall be deemed to have elected to pay the assessment in annual installments. Assessments (and installments of assessments) shall become due and payable on the date provided by law for payment of ad valorem property taxes in the county. Interest shall be charged for late payments, and discounts shall be allowed for prepayment of assessments, in the amounts and during the periods covered by law with respect to payment of ad valorem property taxes in the county. The entire assessment may be paid at any time by payment of the principal and all interest accrued to that date.

(2) It is the intent and purpose of this subsection that any assessment (initial, subsequent or annual) may as determined by the assessment roll be paid and collected in multiple annual installments in such installment amounts and spread over such installment periods as the assessment roll may fix. As to any assessment roll which shall fix and determine multiple annual installment payments spread over periods in excess of three years, the following modifications of designated subsections of this section shall apply:

a. In subsection (b) "three" shall read "multiple";
b. In subsection (c) "second and third" shall read "subsequent";
c. In subsection (d) "second and third" shall read "subsequent"; "one and two years, respectively" shall read "in subsequent years"; and the form of the order of the board of commissioners to the county tax collector shall be suitably modified;
d. In subsection (b) the form of assessment receipt shall be suitably modified for fourth and subsequent annual installments.

(b) After confirmation of the assessment roll the district shall have prepared a form of receipt, with appropriate stubs attached, for the assessment due on each tract or parcel of land as recited in the assessment roll. A separate sheet shall be used for each tract or parcel assessed, and each such separate sheet shall contain three perforated receipts attached to a single stub, with appropriate entries and blank spaces substantially as set forth in subsection (h) of this section. The receipts and stubs for land within each county wherein any part of his district lies shall be separately bound. The bound books of assessment receipts shall be endorsed "Assessments of the (here give the name of the district) Watershed Improvement District due on the first Monday of October, 19 . . . .," and the same endorsement shall be printed at the top of each assessment receipt. The necessary cost of printing and binding such books of assessment receipts and the filling in of the same shall be a proper charge against the district and shall be paid by the board of trustees.

(c) During the month of September next following the confirmation of the assessment roll the district shall mail to the landowners the receipts for the first annual installment with the blanks duly filled in. The district shall also remove from the bound books, and retain, the receipts for the second and third annual installments. On or before the twenty-fifth day of such month the appropriate bound book of stubs, with the names of the property owners and assessment and installment amounts duly filled in, shall be delivered to the board of commissioners of each county wherein any part of the district lies. On or before the first Monday of October next following the said boards of commissioners shall cause such bound books to be delivered to their respective county tax collectors, together with appended orders in substantially the following form:

Tax Collector, ... County:

This is to certify that the attached book of assessment stubs embraces watershed assessments made on certain lands in the County of . . . . which are located within the boundaries of the . . . . Watershed Improvement District. The affected landowners, unless otherwise indicated to the contrary, have elected to pay their assessments in installments, the first of which becomes due on the first Monday of October, 19 . . . ., and must be paid and collected within the time and in the manner required by law. (See G.S. 139-27). Interest for failure to pay this installment shall accrue on the principal amount of the installment at the rate and at the times provided by law for property taxes in the county. You will enter the dates of payments on the stubs and retain the book of stubs in a safe place for use in recording subsequent annual installments. You will make monthly settlements of your collections with the secretary-treasurer of the . . . . Watershed Improvement District, and in all other respects you will discharge your duties as tax collector as required by law.

In witness whereof I have hereunto set my hand and official seal, this . . . . day of . . . ., 19 . . . ..

. . . .
Chairman, Board of Commissioners,
. . . . County

(d) The procedure for the second and third annual installments shall be set forth in this subsection. The district shall mail the receipts for such installments with blanks duly filled in to the landowners during the month of September, one and two years, respectively, after the mailing of the receipts for the first installment. On or before the twenty-fifth day of such month there shall be delivered to the boards of county commissioners a notice of the due date of the installment. On or before the first Monday of October next following the said boards of commissioners shall cause to be delivered to their respective county tax collectors orders in substantially the following form, omitting therefrom the appropriate bracketed words and phrases:

Tax Collector . . . . County:

This is to certify that the [second] [third] installment of the watershed assessment of the . . . . Watershed Improvement District becomes due on the first Monday of October, 19 . . . ., and must be paid and collected within the time and in the manner required by law. (See G.S. 139-27).

Interest for failure to pay this installment shall accrue on the principal amount of the installment at the rate and at the times provided by law for property taxes in the county. You will enter the dates of payments on the stubs [and retain the book of stubs in a safe place for use in recording the third annual installment] [and thereafter retain or dispose of the book of stubs in the manner provided by law.] You will make monthly settlements of your collections with the secretary-treasurer of the .... Watershed Improvement District, and in all other respects you will .... discharge your duties as tax collector as required by law. In witness whereof I have hereunto set my hand and official seal, this .... day of .... 19 .....

....
Chairman, Board of Commissioners,
.... County

(e) All watershed assessments shall be collected by the county tax collector in the same manner as county taxes, except as otherwise herein provided, and such collections shall be enforced in the manner provided by G.S. 105-374 and 105-375; provided, however, that there shall be no right to proceed against personal property in enforcing such collections. The tax collector shall be required on the first day of each month to make settlements with the secretary-treasurer of the Watershed Improvement District of all collections of watershed assessments for the preceding month, and to deposit all moneys so collected in an account maintained in the name of the district at an official depository designated by the district. Such account shall also be used for the deposit of all other funds of the district. Expenditures from such account may be made with the approval of the trustees of the district on requisition from the chairman and the secretary-treasurer of the district. The fee allowed the tax collector for collecting the watershed assessments shall be two percent (2%) of the amount collected, except that, where the tax collector is on a salary basis, such fee shall be paid into the general fund of the county.

If the tax collector shall willfully fail or neglect to comply with any requirement of law concerning collection or deposit of watershed assessments, he shall be guilty of a misdemeanor, and upon conviction shall be subject to fine and imprisonment, in the discretion of the court. He shall likewise be liable to a civil action for all damages which may accrue either to the trustees of the district or the holders of its bonds, to either or both of whom a right of action is hereby given.

(f) No statute of limitation, whether fixed by law especially referred to in this Chapter or otherwise, shall bar the right of the district to enforce any remedy provided by law for the collection of unpaid assessments, save from and after 10 years from and after the due date thereof, or, if payable in installments, 10 years from and after the due date of any installment.

(g) All proceedings for watershed assessments under the provisions of this Article shall be regarded as proceedings in rem (and no mistake or omission as to the name of the owner or person interested in any tract or parcel of land affected thereby shall be regarded a substantial mistake or omission).

(h) Form of Assessment Receipts with Stub.

Landowner	Assessments of the (here give name of district) Watershed Improvement District due on the first Monday of October, 19 . . . .
Owner's Address	
Amount of Entire Assessment	Landowner .... Unpaid Balance of Entire Assessment ....

Date Paid	Amount of 1st Annual Installment due ....
....	Interest for failure to pay this installment shall accrue on the principal amount of the installment at the rate and at the times provided by law for property taxes in the county.
Amount of Each Annual Installment	PAYABLE TO TAX COLLECTOR, ... County, ...
....	North Carolina
	Assessments of the (here give name of district) Watershed Improvement District due on the first Monday of October, 19 . . . . .
Date 1st Annual Installment Paid	Landowner .... Unpaid Balance of Entire Assessment ....
....	Amount of 2nd Annual Installment due ....
Date 2nd Annual Installment Paid	Interest for failure to pay this installment shall accrue on the principal amount of the installment at the rate and at the times provided by law for property taxes in the county.
	PAYABLE TO TAX COLLECTOR, ... County .... North Carolina
Date 3rd Annual Installment Paid	Assessments of the (here give the name of district) Watershed Improvement District due on the first Monday of October, 19 . . . . .
	Landowner .... Unpaid Balance of Entire Assessment ....
	Interest for failure to pay this installment shall accrue on the principal amount of the installment at the rate and at the times provided by law for property taxes in the county.
	PAYABLE TO TAX COLLECTOR, ... County .... North Carolina.

(1959, c. 781, s. 8; 1963, c. 1228, s. 5; 1967, c. 1085, s. 1; 1975, c. 283.)

Editor's Note. — The 1975 amendment substituted "G.S. 105-374 and 105-375" for "G.S. 105-414 and subsections (f) through (v) of G.S. 105-391" preceding the proviso in the first sentence of subsection (e).

Section 105-414, cited near the beginning of subsection (e) of this section, was repealed by Session Laws 1971, c. 806, s. 3, effective July 1, 1971. See now § 105-374. Former § 105-391, also cited near the beginning of subsection (e) of this section, was part of Subchapter II of Chapter 105, which was revised by Session Laws 1971, c. 806, effective July 1, 1971. See the Editor's note to § 105-271. For present provisions similar to former § 105-391, see § 105-374.

§ 139-27.1. Debts may be incurred to be repaid over more than three years. — The other provisions of this Article generally, and particularly the provisions of G.S. 139-26 and 139-27, pertaining to initial and subsequent annual, biennial or triennial assessments or reassessments, shall not be construed to limit the authority of the district, and a watershed improvement district shall be authorized to issue notes, bonds, and other evidences of indebtedness, to be repaid over a period greater than three years and shall have the power, duty and responsibility to provide through benefit assessments all sums which may be necessary to pay in full the principal, interest and other debt service charges of all bonds or other obligations of the district. (1963, c. 1228, s. 6.)

§ 139-28. Fiscal powers of governing body; may hold referendum on question of incurring indebtedness and issuing bonds. — The trustees of a watershed district shall have power, with or without a referendum, to incur indebtedness on behalf of the district to defray any part of the expenses and costs of the district, and may pledge to the repayment thereof funds to be derived from benefit assessments, grants, gifts, or other sources of revenue.

The indebtedness of the district may be evidenced by bonds, bond anticipation notes, benefit assessment anticipation notes or revenue anticipation notes. No debt shall be contracted for a term of more than 40 years.

The trustees, if they so elect, may request the board or boards of election of each county wherein any part of the district lies to call a referendum on the question of whether the district shall incur debt or issue bonds for one or more of the purposes for which it was created. (1959, c. 781, s. 8; 1963, c. 1228, s. 7; 1977, c. 483.)

Editor's Note. — The 1977 amendment substituted "40 years" for "20 years" at the end of the second sentence of the second paragraph.

§ 139-29. Conduct of referendum. — Such referendum may be held at the same time as the initial or a subsequent election for officers of the district. Such referendum shall be conducted in the manner provided for the conduct of elections for officers by the last two paragraphs of subsection (c) of G.S. 139-21; except that—in place of the provisions thereof requiring that the ballots contain the names of nominees, the title and term of office, and the instruction as to the number of candidates to be voted upon—the ballots shall contain a question and a voting instruction in the form certified to the board or boards of election by the trustees of the district. The form of the said question and instruction, with appropriate insertions and deletions, shall be substantially as follows:

Shall the .... Watershed Improvement District (incur an indebtedness to .... in the amount of ....) (issue bonds in the amount of ....) for the purpose of ....? vote "Yes" or "No."

(1959, c. 781, s. 8.)

§ 139-30. Resolution authorizing district to incur indebtedness or issue bonds. — If such referendum is held and a majority of the votes cast are in favor of incurring the indebtedness or issuing the bonds, the trustees of the district shall enter on the records of the district a resolution authorizing the district to incur the indebtedness or issue the bonds for one or more of the purposes for which the district was created. (1959, c. 781, s. 8; 1963, c. 1228, s. 8.)

§ 139-31: Repealed by Session Laws 1963, c. 1228, s. 9.

§ 139-32. Annual assessments to repay indebtedness or bonds and debt service charges. — The trustees of the watershed improvement district shall, if necessary for the payment of the principal, interest and other debt service charges on such indebtedness or bonds, and to amortize the repayment of such indebtedness or bonds, levy annual assessments on all the real estate in the watershed improvement district, which may be subject to assessment under the provisions of this Article, to pay such principal, interest and other debt service charges, and to amortize such indebtedness or bonds. Such additional assessments shall constitute a lien, be apportioned, levied, assessed and collected in the manner provided for assessments generally in G.S. 139-25, 139-26, and 139-27. (1959, c. 781, s. 8; 1963, c. 1228, s. 10.)

§ 139-33. Powers granted additional to the powers of soil conservation districts; soil conservation districts to continue to exercise their powers. — The powers herein granted to watershed improvement districts shall be additional to those of the soil conservation district in which the watershed improvement district is situated; and such soil conservation district or districts shall be authorized, notwithstanding the creation of the watershed improvement district, to continue to exercise their powers within the watershed improvement district. (1959, c. 781, s. 8.)

§ 139-34. Power to incur debts and accept gifts, etc. — A watershed improvement district shall have the power, in the manner hereinabove set forth, to incur debts and repay the same over such period of time and at such rate or rates of interest, not exceeding six per centum (6%) per annum, as the lender or lenders agree to; and to accept, receive, and expend gifts, grants or loans from whatever source received. (1959, c. 781, s. 8.)

§ 139-35. Supervision by Environmental Management Commission. — (a) The Environmental Management Commission, to the extent herein provided, shall have supervisory responsibility over the programs provided for in this Article.

(b) Each watershed improvement district (to the extent that moneys are made available therefor by the State of North Carolina or any of its agencies or political subdivisions, by any municipality, or otherwise) shall:

(1) By means of suitable measuring and recording devices and facilities and at intervals prescribed by the Environmental Management Commission, record the inflow of water into and release of water from such reservoirs of the district as may be designated by the Environmental Management Commission; and

(2) Make periodic reports of such records as required by the Environmental Management Commission.

(c) The Environmental Management Commission shall be the State agency to which watershed work plans developed under Public Law 566 (83rd Congress, as amended) for contemplated works of improvement shall be submitted for review and approval or disapproval. All other work plans for contemplated works of improvement pursuant to this Chapter shall likewise be submitted to the Environmental Management Commission for review and for approval or disapproval. The Environmental Management Commission shall approve such work plans if, in its judgment, the work plans

(1) Provided for proper and safe construction of proposed works of improvement;

(2) Show that the construction and operation of the proposed works of improvement (in conjunction with other such works and related structures of the district and the watershed) will not appreciably diminish the flow of useful water that would otherwise be available to existing downstream water users during critical periods;

(3) Determine whether a program of flood plain management in connection with such proposed works is in the public interest, and to withhold approval until satisfactory measures are incorporated; and

(4) Are otherwise in compliance with law.

No work of improvement may be constructed or established without the approval of work plans by the Environmental Management Commission pursuant to this subsection. The Environmental Management Commission may publish flood plain management criteria to be followed by those persons, district, or other agencies preparing such work plans. The construction or establishment of any such work of improvement without such approval, or without conforming to a work plan approved by the Environmental Management Commission, may be enjoined. The Environmental Management Commission may institute an action for such injunctive relief in the superior court of any county wherein such construction or establishment takes place, and the procedure in any such action shall be as provided in Article 37, Chapter 1 of the General Statutes.

(d) In conjunction with any work plans submitted to the Environmental Management Commission under subsection (c) of this section, a watershed improvement district shall submit in such form as the Environmental Management Commission may prescribe a plan of its proposed method of operations for works of improvement covered by the work plans and for related structures. With the approval of the Environmental Management Commission, the district may amend its initial plan of operations from time to time. Environmental Management Commission approval of the initial plan of operations shall not be required.

(e) If the Environmental Management Commission has reason to believe that a watershed improvement district is not operating any work of improvement or related structure in accordance with its plan of operations as amended, the Environmental Management Commission on its own motion or upon complaint may order a hearing to be held thereon upon not less than 30 days' written notification to the district and complainant, if any, by personal service or registered mail. Notice of such hearing shall be published at least once a week for two successive weeks. In connection with any such hearing the Environmental Management Commission shall be empowered to administer oaths; to take testimony; and, in the same manner as the superior court, to order the taking of depositions, issue subpoenas, and to compel the attendance of witnesses and production of documents. If the Environmental Management Commission determines from evidence of record that the district is not operating any work of improvement or related structure in accordance with its plan of operations, as amended, the Environmental Management Commission may issue an order directing the district to comply therewith or to take other appropriate corrective action. Upon failure by a district to comply with any such order, the Environmental Management Commission may institute an action for injunctive relief in the superior court of any county wherein such noncompliance occurs, and the procedure in any such action shall be as provided in Article 37, Chapter 1, of the General Statutes.

(f) As used in this section the term "critical periods" means monthly periods, or other periods designated by the Environmental Management Commission when (in the area affected) below-average stream flows coincide with above-average utilization of water; provided, that where insufficient data are available to permit reliable determinations concerning these matters, the Environmental Management Commission may adopt as the "critical period" for any particular area the period June 15 — September 15. (1959, c. 781, s. 8; 1967, c. 1070, ss. 2, 3; 1973, c. 1262, s. 38.)

§ 139-36. Dissolution of watershed improvement district. — A watershed improvement district, after all outstanding debts or obligations have been satisfied, if any, may be dissolved upon:

(1) Petition filed with the supervisors of the soil and water conservation district or districts wherein the watershed improvement district lies, setting forth the change of circumstances which causes such district to be no longer of any benefit, and signed by any 100 owners of land lying within the limits of the watershed improvement district, or a majority of such owners if their total number be less than 200;
(2) Public hearings held, as provided in G.S. 139-18; and
(3) An order of the supervisors of the soil and water conservation district or districts approving the action sought.

If the foregoing requirements are met, the supervisors shall declare the watershed improvement district to be dissolved. Such declaration of dissolution shall be recorded in their official minutes, and the same certified to the Soil and Water Conservation Commission, the Environmental Management Commission, and the clerk of the superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings docket of such clerk. (1959, c. 781, s. 8; 1973, c. 1262, s. 38.)

§ 139-37. Participation by cities, counties, industries and others. — (a) Any industry, or private water user, the State of North Carolina, the United States or any of its agencies, any county, municipality or any other political subdivision may participate in watershed improvement district works or projects upon mutually agreeable terms relating to such matters as the construction, financing, maintenance and operation thereof.

(b) Any county or municipality may contribute funds toward the construction, maintenance and operation of watershed improvement district works or projects, to the extent that such works or projects:

(1) Provide a source (respectively) of county or municipal water supply; or protect an existing source of such supply, enhance its quality or increase its dependable capacity or quantity; or

(2) Protect against or alleviate the effects of flood-water or sediment damages affecting, or provide drainage benefits for, (respectively) county or municipally owned property or the property (respectively) of county or municipal inhabitants located outside the boundaries of such district but within the respective boundaries of such county or municipality.

Each county and city may fund appropriations for the purposes of this section by levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law. (1959, c. 781, s. 8; 1973, c. 803, s. 33.)

§ 139-37.1. Borrowing by local units for anticipated water supplies. — (a) Any local unit may issue bonds or other obligations in the manner provided by this section (and may appropriate and expend funds derived therefrom (for the purpose of financing all or any part of the cost of providing storage capacity for anticipated future or present water supply needs, in conjunction with any watershed improvement work or project.

(b) Any two or more local units, each situated in whole or in part in the basin of the same river in which a watershed improvement work or project is located, may issue bonds or other obligations for the purpose stated in subsection (a) of this section in such amounts as constitute their proportionate parts, respectively, of the estimated cost of such a work or project. The governing bodies of said local units shall jointly determine and agree upon the proportionate part of the estimated cost which each local unit is to bear, taking into consideration the taxable resources of each local unit and such other economic and beneficial factors as deemed pertinent and advisable, and such determination shall be recorded in the minutes of each such body.

(c) Such bonds or other obligations of counties shall be issued pursuant to the County Finance Act, as amended: Provided, the amount thereof shall constitute an item to be included in the sum in item (8) of G.S. 153-84 of the said act in arriving at the net debt for other than school purposes in item (9) of said section: Provided, further, the provisions of G.S. 153-80, 153-82 and 153-103 of said act shall not apply to such bonds. Such bonds or obligations shall mature at such time or times, not exceeding 40 years from their date, and may be subject to redemption with or without premium as the governing body may by resolution determine, with the approval of the Local Government Commission.

(d) Such bonds or other obligations of municipalities shall be issued pursuant to the Municipal Finance Act, 1921, as amended, and the amount thereof shall constitute a deduction from the gross debt under subsection (a)(2) of G.S. 160-383 of said act: Provided, the provisions of G.S. 160-382 and 160-391 shall not apply to such bonds and such bonds may not be consolidated with bonds authorized by another ordinance as provided in G.S. 160-380 of said act. Such bonds or obligations shall mature at such time or times, not exceeding 40 years from their date, and may be subject to redemption with or without premiums as the governing body may determine, with the approval of the Local Government Commission.

(e) Notwithstanding any other provisions of law, the Local Government Commission may sell any bonds or other obligations issued pursuant to this section to the United States of America, or any agency thereof, at private sale and without advertisement. The first installment of principal of bonds or other obligations issued under this section may be made payable not more than 10 years after the date of the bonds or obligations. Accrual of interest may be deferred not more than 10 years. Any such bonds or other obligations may contain appropriate provisions which will authorize the initiation of payments of interest and installments of principal on the bonds on a date not later than 10 years from the date of such bonds or obligations, or on the date when the local unit shall begin to use such local water supplies, whichever date shall occur first. The date on which such use of local water supplies begins shall be determined by the governing body of the local unit issuing such bonds or other obligations, which determination shall be binding and conclusive.

(f) If the bonds or other obligations of one or more local units which have agreed upon their proportionate part of the estimated cost, as provided for in subsection (b) of this section, are required by the laws or the Constitution to be submitted to the voters of such local unit at an election and a majority of said voters voting in said election vote against the issuance of such bonds, the bonds or other obligations of any other local unit which have been duly authorized may be issued in whole or in part only when a sufficient number of local units have agreed upon their proportionate part as provided in subsection (b) of this section and have duly authorized their bonds or obligations so that the full amount of such estimated cost may be paid.

(g) As used in this section the following terms have the following meanings:

"Local unit" means any county or municipality.

"Local water supplies" include any municipal or county water supplies, whether or not the purposes served by a particular storage facility financed under this section initially include service to domestic or any other water supply customers.

"Costs" include the cost of water storage capacity in a structure or facility (or other equivalent costs for water supply purposes) and the cost of facilities for release or withdrawal of water stored for water supply purposes, as well as other installation costs of a structure or facility including costs of real and personal property, easements, options, or other interests in real property, and water rights, engineering and inspection fees, contract administration costs, and costs of conveyance facilities for local water supplies. (1967, c. 987, s. 4.)

Cross Reference. — See Editor's note to § 139-3.

Editor's Note. — Sections 153-84, 153-103, 160-380, 160-382, 160-383 and 160-391, referred to in subsections (c) and (d), were repealed by Session Laws 1971, c. 780. See now Subchapter IV of Chapter 159.

§ 139-38. Power of eminent domain conferred on watershed improvement districts. — (a) A watershed improvement district shall have the power to acquire by condemnation any interest in land needed in carrying out the purposes of this act, except interests in land within the boundaries of any project licensed by the Federal Power Commission or interests in land owned or held for use by a public utility as defined in G.S. 62-3. This power may be exercised only after:

(1) The district makes application to the Soil and Water Conservation Commission, identifying the land sought to be condemned and stating the purposes for which said land is needed; and

(2) The Soil and Water Conservation Commission finds that the land is sought to be acquired for a proper district purpose. The findings of the Soil and Water Conservation Commission shall be conclusive in the absence of fraud, notwithstanding any other provision of law.

(b) The Soil and Water Conservation Commission shall certify copies of its findings to the applicant district, the Environmental Management Commission and the clerk of superior court of the county or counties wherein any part of the district lies for recordation in the special proceedings thereof.

(c) For purposes of this section:

(1) The term "interest in land" means any land, right-of-way, right of access, privilege, easement, or other interest in or relating to land. Said "interest in land" does not include an interest in land which is held or used in whole or in part for a public water supply, unless such "interest in land" is not necessary or essential for such uses or purposes.

(2) A "description" of land shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land. In the discretion of the applicant district, boundaries may be described by any of the following methods or any combination thereof: by reference to a map; by metes and bounds; by general description referring to natural boundaries, or to boundaries of existing political subdivisions or municipalities, or to boundaries of particular tracts or parcels of land.

(3) "Commission" means the Soil and Water Conservation Commission.

(d) The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in Chapter 40, Article 2, and all acts amendatory thereof.

(e) Interests in land acquired pursuant to this section may be used in such manner and for such purposes as the trustees of the district deem best. If, in the opinion of the trustees, such lands should be sold, leased or rented, the trustees may do so, subject to the approval of the Soil and Water Conservation Commission.

(f) All provisions of local acts inconsistent herewith limiting condemnation powers of watershed improvement districts or of counties for county watershed improvement programs are hereby repealed. (1967, c. 987, s. 5; 1973, c. 1262, s. 38.)

Cross Reference. — See Editor's note to § 139-3.

ARTICLE 3.

Watershed Improvement Programs Expenditure by Counties.

§ 139-39. Alternative method of financing watershed improvement programs by special county tax. — The board of county commissioners in any county is authorized to call a special election to determine whether it be the will of the qualified voters of the county that they levy and cause to be collected annually, at the same time and in the same manner as the general county taxes are levied and collected, a special tax at a rate not to exceed twenty-five cents (25¢) on each one hundred dollars ($100.00) valuation of property in said county, to be known as a "Watershed Improvement Tax," the funds therefrom, if the levy be authorized by the voters of said county, to be used for the prevention of flood water and sediment damages, and for furthering the conservation, utilization and disposal of water and the development of water resources. (1959, c. 781, s. 10; 1967, c. 987, s. 8.)

Local Modification. — Alexander: 1967, c. 500; Cabarrus: 1965, c. 615; Camden: 1973, cc. 387, 957; Caswell: 1969, c. 553; Graham: 1967, c. 503; Iredell: 1967, c. 623; Johnston: 1969, c. 955; Lincoln: 1969, c. 934; Mecklenburg: 1969, c. 1191; Mitchell: 1963, c. 1033; New Hanover: 1969, c. 958; Onslow: 1967, c. 725, s. 1; Pasquotank: 1973, c. 957; Person: 1967, c. 111, s. 1; Perquimans: 1973, c. 957; Polk: 1963, c. 996; Rowan: 1967, c. 568; Stokes: 1963, c. 156; Surry: 1963, c. 442; Union: 1965, c. 19, s. 1; Wayne: 1969, c. 821; Yadkin: 1961, c. 433.

Cross Reference. — See Editor's note to § 139-3.

§ 139-40. Conduct of election. — (a) There shall be no new registration of voters for such an election. The registration books shall be open for registration of new voters in said county and registration of any and all legal residents of said county, who are or could legally be enfranchised as qualified voters for regular general elections, shall be carried out in accordance with the general election laws of the State of North Carolina as provided for local elections. Notice of such registration of new voters shall be published in a newspaper circulated in said county, once, not less than 30 days before and not more than 40 days before, the close of the registration books, stating the hours and days for registration. The special election, if called, shall be under the control and supervision of the county board of elections.

(b) The form of the question shall be substantially the words "For Watershed Improvement Tax of Not More Than .... Cents Per One Hundred Dollar ($100.00) Valuation," and "Against Watershed Improvement Tax of Not More Than .... Cents Per One Hundred Dollar ($100.00) Valuation," which alternates shall appear separated from each other on one ballot containing opposite, and to the left of each alternate, squares of appropriate size in one of which squares the voter may make a mark "X" to designate the voter's choice for or against such tax, provided, the board of county commissioners may vary the aforesaid form of the question to be placed upon the ballot for the watershed improvement tax election in such manner as the board deems appropriate, and the board of elections shall cause to be placed upon the ballot such form of the question as may be requested by the board of county commissioners. The board of county commissioners shall designate the amount of the maximum annual rate of such tax to be levied, which amount may be less than but may not exceed twenty-five cents (25¢) on the one hundred dollar ($100.00) valuation of property in the county, and said amount shall be stated on the ballot in the question to be voted upon. Such ballot shall be printed on white paper and each polling place shall be supplied with a sufficient number of ballots not later than the day before the election. At such special election the election board shall cause to be placed at each voting precinct in said county a ballot box marked "Watershed Improvement Tax Election."

(c) The duly appointed judges and other election officials who are named and fixed by the county board of elections shall count the ballots so cast in such election and the results of the election shall be officially canvassed, certified and announced by the proper officials of the board of elections, according to the manner of canvassing, certifying and announcing the elections held under the general election laws of the State as provided for local elections.

(d) If a majority of those voting in such election favor the levying of such a tax, the board of commissioners of such county is authorized to levy a special tax at a rate not to exceed twenty-five cents (25¢) on each one hundred dollars ($100.00) of assessed value of real and personal property taxable in said county, not to exceed the maximum rate of tax approved by the voters in such election, and the General Assembly does hereby give its special approval for the levy of such special tax. (1959, c. 781, s. 10; 1961, c. 32; 1969, c. 711, s. 2.)

Local Modification. — Alexander: 1967, c. 500; Cabarrus: 1965, c. 615; Camden: 1973, cc. 387, 957; Caswell: 1969, c. 553; Graham: 1967, c. 503; Iredell: 1967, c. 623; Johnston: 1969, c. 955; Lincoln: 1969, c. 934; Mecklenburg: 1969, c. 1191; Mitchell: 1963, c. 1033; New Hanover: 1969, c. 958; Onslow: 1967, c. 725, s. 1; Pasquotank: 1973, c. 957; Person: 1967, c. 111, s. 1; Perquimans: 1973, c. 957; Polk: 1963, c. 996; Rowan: 1967, c. 568; Stokes: 1963, c. 156; Surry: 1963, c. 442; Union: 1965, c. 19, s. 1; Wayne: 1969, c. 821; Yadkin: 1961, c. 433.

§ 139-41. Powers of county commissioners. — (a) If the majority of the qualified voters voting in such election favor the levying of such tax, then and in that event, the board of county commissioners shall have all powers of soil and water conservation districts as set forth in subdivisions (1), (2), (3), (4), (5), (6), (7), (8) and (10) of G.S. 139-8 (subject to the limitations set forth in subdivision (12) of such section) concerning flood prevention, development of water resources, floodwater and sediment damages, and conservation, utilization and disposal of water. It is the intention of the General Assembly that such powers shall normally be exercised within all or parts of one or more single watersheds, or of two or more watersheds tributary to one of the major drainage basins of the State, but exceptions to this policy may be permitted in appropriate cases; provided, however, it is not the intention of the General Assembly to authorize hereby the diversion of water from one stream or watershed to another.

(b) The board of county commissioners may itself exercise such powers or, for that purpose, may create a watershed improvement commission to be composed of three members appointed by the board. The terms of office of the members of the commission shall be six years, with the exception of the first two years of existence of the commission, in which one member shall be appointed to serve for a period of two years, one for a period of four years, and one for a period of six years; thereafter all members shall be appointed for six years, and shall serve until their successors have been appointed and qualified. Vacancies in the membership of the commission occurring otherwise than by expiration of term shall be filled by appointment to the unexpired term by the board of county commissioners. The commission shall hold its first meeting within 30 days after its appointment as provided for in this Article, and the beginning date of all terms of office of commissioners shall be the date on which the commission holds its first meeting. The provisions of G.S. 139-22 and 139-23 concerning the organization and compensation of the elected board of trustees of a watershed improvement district, and concerning the powers and duties of such trustees respecting personnel, surety bonds and audits, shall apply to the commission. The commission shall provide the board of county commissioners 30 days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within 60 days after the expiration of the fiscal year ending on June 30.

(c) The board of county commissioners may create a single watershed improvement commission for the entire county or may create separate commissions for individual projects or watersheds.

(d) The board of county commissioners, as an alternative to itself exercising the powers set forth in subsection (a) of this section or to creating a watershed improvement commission for that purpose, may by resolution designate the soil and water conservation district having jurisdiction in the county to exercise authority for the board of county commissioners in carrying out the county watershed improvement program. The provisions of G.S. 139-22 and G.S. 139-23 concerning the organization and compensation of the elected board of trustees of a watershed improvement district, and concerning the power and duties of such trustees respecting personnel, surety bonds and audits, shall apply to any soil and water conservation district so designated. The soil and water conservation district shall provide the board of county commissioners 30 days prior to July 1 a proposed budget for the fiscal year commencing on July 1 and shall provide the board of county commissioners an audit by a certified public accountant within 60 days after the expiration of the fiscal year ending on June 30.

(e) Counties which carry out watershed improvement programs under this Article shall be subject to supervision by the Environmental Management Commission pursuant to G.S. 139-35 to the same extent as are watershed improvement districts, and, for this purpose the words "districts" and "watershed improvement districts," wherever they occur in such section, shall be read as referring to counties.

(f) Any industry or private water user, the State of North Carolina, the United States or any of its agencies, any municipality, any other county, or any other political subdivision may participate in county watershed improvement programs hereunder in the same manner and to the same extent as provided by G.S. 139-37 with respect to participation in watershed improvement district programs.

(g) The board of county commissioners may provide for county watershed improvement programs and any or all other related activities (such as water supply systems, sewerage systems, water resources programs, beach erosion control programs, and conservation programs) to be coordinated, to be jointly undertaken by two or more local agencies, or to be assigned to a single county agency designated by such name and organized in such manner as the board deems appropriate. (1959, c. 781, s. 10; 1967, c. 987, s. 10; 1969, c. 711, s. 3; 1971, c. 1138, s. 2; 1973, c. 1262, s. 38.)

Local Modification. — Davie: 1961, c. 794, s. 1½; Forsyth: 1963, c. 761, s. 4; Guilford: 1963, c. 734; Iredell: 1961, c. 794, s. 1½; 1963, c. 955; McDowell: 1963, c. 637; Onslow: 1967, c. 725, s. 2½; Person: 1961, c. 794, s. 1½; 1967, c. 111, s. 2; Polk: 1961, c. 794, s. 1½; Rowan: 1961, c. 794, ss. 1, 1½; 1963, c. 109; Stokes: 1963, cc. 155, 401; Union: 1961, c. 794, s. 1½; 1963, c. 955; 1965, c. 19, s. 2; Wake: 1961, c. 794, s. 1½; Yadkin: 1961, c. 794, s. 1½; 1963, c. 401.

Cross Reference. — See Editor's note to § 139-3.

Editor's Note. — Section 10 of Session Laws 1967, c. 987, which amended this section, provides: "It is hereby declared that the purpose of this section is to clarify the existing authority of boards of county commissioners to acquire property in connection with county watershed improvement programs. The authority expressed in this section concerning acquisition, use and disposition of property by counties under the provisions of G.S. 139-41 (a)(4) shall be considered to be in addition to the general property acquisition use and disposal powers of counties under G.S. Chapter 153 or otherwise. All expenditures heretofore incurred by counties for property acquisition in connection with county watershed improvement programs are hereby validated and confirmed, as being based upon said general property acquisition powers of counties. The proceeds of any tax heretofore or hereafter approved by the voters of a county for a county watershed improvement program, or authorized by local act for a county watershed improvement program, may be expended for property acquisition in connection with such program." Chapter 153 was repealed by Session Laws 1973, c. 822. For present provisions relating to counties, see Chapter 153A.

§ 139-42. Article intended as supplementary. — This Article is intended to provide an alternative method of financing and operating watershed improvement programs, supplementary to the method set forth in Article 2 of this Chapter. (1959, c. 781, s. 10.)

§ 139-43. Transfer and continuation of programs. — A watershed improvement program initiated under this Article may be discontinued as a county program and thereafter transferred to or renewed as a watershed district program under Article 2, upon compliance with the provisions of said Article 2 for initiating district programs; and a watershed improvement district program initiated under Article 2 may be discontinued as a district program and thereafter transferred to or renewed as a county program under this Article, upon compliance with the provisions of this Article for initiating county programs. (1959, c. 781, s. 10.)

§ 139-44. Power of eminent domain conferred on counties in certain cases. — A county which has been authorized to levy a watershed improvement tax, whether pursuant to this Article or by local act or otherwise, shall have for purposes of its county watershed improvement program the powers conferred upon watershed improvement districts by G.S. 139-38 (as the same may be amended from time to time), subject to the limitations and procedures prescribed therein. For this purpose, a county shall be considered a watershed improvement district, and the board of county commissioners shall be considered the trustees of the applicant district. (1967, c. 987, s. 6.)

Cross Reference. — See Editor's note to § 139-3.

§ 139-45. Extraterritorial powers of counties. — A county which has been authorized to levy a watershed improvement tax, whether pursuant to Article 3 of General Statutes 139 or by special act or otherwise, may take any authorized watershed action and may expend funds for any authorized watershed purpose (including acquisition of real and personal property, easements, options, or other interests in real property) outside as well as inside the boundaries of the county, if the board of county commissioners finds that substantial flood prevention, drainage or water supply benefits will accrue to property located within the boundaries of the county as a result of such action or expenditure. The board of county commissioners may delegate to a watershed improvement commission the function of making such findings, either generally or in a particular case. (1967, c. 987, s. 7.)

Cross Reference. — See Editor's note to § 139-3.

§ 139-46. Recreational and related aspects of watershed improvement programs. — (a) Local watershed sponsors may install and maintain recreational facilities and services in connection with watershed improvement works or projects, and may provide areas (including structures) for the conservation and replacement of fish and wildlife habitat. For any of these purposes said sponsors may appropriate and expend funds, may levy taxes and assessments, and may issue bonds and notes, to the same extent as in the case of other authorized watershed activities. Such recreational facilities and services may include but are not limited to any or all of the water-related recreational facilities provided for in subsection (b) of this section, and parking areas, ingress and egress roads, hiking or nature trails, picnic areas and campsites. No application for watershed planning under Public Law 566 (83rd Congress, United States), as amended, may be approved by the Soil and Water Conservation Commission until after receipt and consideration of recommendations from the appropriate fish and wildlife agency concerning replacement of fish and wildlife habitat in mitigation of anticipated damages: Provided that this requirement for consideration of fish and wildlife recommendations shall not apply if such recommendations are not received by the Soil and Water Conservation Commission within 30 days after the Soil and Water Conservation Commission requests such recommendations. Within the meaning of this provision the "appropriate fish and wildlife agency" means the North Carolina Wildlife Resources Commission as to matters within its jurisdiction, and the North Carolina Department of Natural Resources and Community Development as to matters within its jurisdiction, or both such agencies as to matters within their concurrent jurisdiction.

(b) It is hereby declared that the provisions of this Chapter authorizing works of improvement, structures, plans, surveys and investigations for the development of water resources were intended to include water-related recreational facilities, including but not limited to boat launching areas and facilities, bathhouses, campsites and picnic areas adjacent to the water, and other basic facilities for water recreational areas. All expenditures heretofore incurred by any local watershed sponsor for such water-related recreational facilities are hereby validated and confirmed. The proceeds of any tax heretofore approved by the voters of a county for a county watershed improvement program, or authorized by special or local act for a county watershed improvement program, may be expended for such water-related recreational facilities, if the board of county commissioners after a public hearing determines that the proceeds should be so expended. Notice of such hearing shall be published as provided for notices under Article 2 of this Chapter. No action based on the alleged invalidity of the expenditures herein confirmed or of the use of tax proceeds herein authorized shall lie after January 1, 1968, to enjoin or contest any such expenditure or any such use of tax proceeds.

(c) Within the meaning of this section "local watershed sponsors" include watershed improvement districts, soil and water conservation districts, drainage districts, municipalities, and counties undertaking county watershed programs under Article 3 of this Chapter or any local act granting similar powers. (1967, c. 987, s. 9; 1973, c. 1262, ss. 38, 86; 1977, c. 771, s. 4.)

Cross Reference. — See Editor's note to § 139-3.

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsection (a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 139-47. Procedures to be followed in connection with watershed improvement or drainage projects that involve channelization. — (a) As used in this section:

(1) The term "channelization" means channel excavation but does not include channel clearing and snagging work. Determinations by the Environmental Management Commission that a project involves channelization shall be conclusive for purposes of this section.

(2) The term "channel excavation" means the construction or enlargement of a channel by the removal and disposal of material by excavation to facilitate runoff of floodwater or drainage of water.

(3) "Channel clearing and snagging" means the removal and disposal of trees, snags, drifts, boulders or other obstructions from the flow area of a natural or excavated channel.

(b) A notice of public hearing for every preliminary project investigation of the Soil Conservation Service or recommended report of the Army Corps of Engineers or any project planning report of the Tennessee Valley Authority concerning a watershed improvement project or drainage project that involves channelization shall be published in a newspaper of general circulation in the county or counties wherein any part of the project lies at least one time, not less than two weeks nor more than four weeks prior to the date of the public hearing. The notice shall include a map of the project, not less than one-fourth page in size, delineating the boundaries of the project and indicating the proposed works of improvement, including any channelization features.

(c) Following publication of the notice, the Environmental Management Commission (or its designee pursuant to G.S. 143-215.3(a)(4)) shall hold a public hearing in the county or counties wherein any part of the project lies to allow interested parties to be heard concerning the proposed project. The hearing shall be held pursuant to the provisions of G.S. 143-215.4(d), except that notice of the hearing shall be given as required by subsection (b) of this section. The decision of the Environmental Management Commission shall be subject to judicial review pursuant to G.S. 143-215.5.

(d) Every preliminary project investigation or recommended report concerning a watershed improvement project or drainage project that involves channelization shall be submitted to the Environmental Management Commission for review and for approval or disapproval. Such review shall be prior to, and in addition to, the review of watershed work plans provided for by G.S. 139-35. The Environmental Management Commission shall approve such investigation or report, following the public hearing held pursuant to subsection (c) of this section, if, in its judgment, the investigation or report shows that any channelization features of the proposed project are necessary to the project and that no other feasible alternatives are available. No work of improvement may be constructed or established without the approval of the preliminary project investigation or recommended report by the Environmental Management Commission pursuant to this section. The construction or establishment of any such work of improvement without such approval, or without conforming to a preliminary project investigation or recommended report approved by the Environmental Management Commission, may be enjoined. Provided, however, the provisions of this section shall not apply to the activities and functions of the North Carolina Department of Human Resources and local health departments that are engaged in mosquito control for the protection of the health and welfare of the people of the coastal area of North Carolina as provided under G.S. 130-206 through 130-209. The Environmental Management Commission may institute an action for injunctive relief in the superior court of any county wherein such construction or establishment takes place, and the procedure in such action shall be as provided in Article 37, Chapter 1 of the General Statutes. (1971, c. 1138, s. 3; 1973, c. 476, s. 128; c. 1262, s. 23.)

Editor's Note. — Session Laws 1971, c. 1138, s. 5, provides: "This act shall be in full force and effect from and after its ratification. Section 3 of this act shall apply only to projects as to which a preliminary project investigation or recommended report is issued, after the effective date of this act. However, this act shall apply to any Tennessee Valley Authority project not presently under construction." The act was ratified July 21, 1971.

Chapter 140.

State Art Museum; Symphony and Art Societies.

Article 1.

North Carolina Museum of Art.

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140-3. Powers and duties of Director of Museum of Art.
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Article 1A.

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140-9. Allocations from Contingency and Emergency Fund; expenditures.
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140-14. North Carolina Art Society as membership arm of the North Carolina Museum of Art; promotion of public appreciation of art; organization of art exhibits, etc.
140-15. Exemption from taxes.

ARTICLE 1.

North Carolina Museum of Art.

§ 140-1. Agency of State; functions. — The North Carolina Museum of Art is an agency of the State of North Carolina. The functions of the North Carolina Museum of Art shall be to acquire, preserve, and exhibit works of art for the education and enjoyment of the people of the State, and to conduct programs of education, research, and publication designed to encourage an interest in and an appreciation of art on the part of the people of the State. (1961, c. 731.)

Appraisal of Works of Art. — See North Carolina State Art Soc'y v. Bridges, 235 N.C. 125, 69 S.E.2d 1 (1952).

§ 140-2. Certain powers and duties of Art Commission. — (a) to (c) Repealed by Session Laws 1973, c. 476, ss. 38, 84, effective July 1, 1973.

(d) The Art Commission shall have the following powers and duties:

(1) To adopt bylaws for its own government.

(2) To adopt policies, rules, and regulations for the conduct of the North Carolina Museum of Art.

(3) to (6) Repealed by Session Laws 1973, c. 476, s. 38, effective July 1, 1973.

(7) On behalf and in the name of the North Carolina Museum of Art, to acquire by gift or will, absolutely or in trust, from individuals, corporations, the federal government, or from any other source, money or other property which may be retained, sold, or otherwise used to promote the purposes of the North Carolina Museum of Art. The net proceeds of the sale of all property acquired under the provisions of

this paragraph shall be deposited in the State treasury to the credit of "The North Carolina Museum of Art Special Fund."

(8) To exchange works of art owned by the North Carolina Museum of Art for other works of art which, in the opinion of the Department of Cultural Resources, would improve the quality, value, or representative character of the art collection of the Museum.

(9) To sell any work of art owned by the North Carolina Museum of Art if the Department of Cultural Resources finds that it is in the best interest of the Museum to do so, unless such sale would be contrary to the terms of acquisition. The net proceeds of each such sale, after deduction of the expenses attributable to that sale, shall be deposited in the State treasury to the credit of "The North Carolina Museum of Art Special Fund," and shall be used only for the purchase of other works of art. No work of art owned by the North Carolina Museum of Art may be pledged or mortgaged.

(10) Repealed by Session Laws 1973, c. 476, s. 38, effective July 1, 1973. (1961, c. 731; 1973, c. 476, ss. 38, 84.)

Cross Reference. — As to the Art Commission, see §§ 143B-54 through 143B-57.

§ 140-3. Powers and duties of Director of Museum of Art. — (a), (b) Repealed by Session Laws 1973, c. 476, s. 38, effective July 1, 1973.

(c) The Director shall have the following powers and duties:

(1) To direct and administer the North Carolina Museum of Art in accordance with the rules and regulations adopted by the Art Commission.

(2) Repealed by Session Laws 1973, c. 476, s. 38, effective July 1, 1973.

(3) To serve as secretary to the Art Commission.

(4) To serve as director of collections of the Museum. (1961, c. 731; 1973, c. 476, s. 38.)

§ 140-4. Gifts maintained as special fund. — All gifts of money to the North Carolina Museum of Art shall be paid into the State treasury and maintained as a fund to be designated "The North Carolina Museum of Art Special Fund." (1961, c. 731.)

§ 140-5. Gifts exempt from taxation. — All gifts made to the North Carolina Museum of Art shall be exempt from every form of taxation including, but not by way of limitation, ad valorem, intangible, gift, inheritance, and income taxation. (1961, c. 731.)

§ 140-5.1. Transfer of right, title and interest of State Art Society to Museum of Art. — All right, title, and interest of the North Carolina State Art Society, Incorporated, in and to the works of art, library, equipment, records relating to the assets of the Museum, unexpended appropriations, executory contracts, and all other properties housed in or appurtenant to the North Carolina Museum of Art, including the funds constituting the "State Art Society Special Fund," are hereby transferred to and vested in the North Carolina Museum of Art, effective July 1, 1961, to be held by the Museum for the use and benefit of the people of the State upon such terms, restrictions, and trusts as those respective properties are now held by the North Carolina State Art Society, Incorporated. The board of directors of the North Carolina State Art Society, Incorporated, shall, prior to July 1, 1961, by resolution direct the appropriate officers of the board of directors to execute a proper instrument confirming in the North Carolina Museum of Art all right, title, and interest of the North Carolina State Art Society, Incorporated, in and to the works of art, library, equipment, records relating to the assets of the Museum, unexpended appropriations, executory contracts, and all other properties housed in or appurtenant to the North Carolina Museum of Art, including the funds constituting the "State Art Society Special Fund."

In case of uncertainty as to whether any particular item or class of property is included within the provisions of this section, the matter shall be determined by the Governor. (1961, c. 731.)

ARTICLE 1A.

Art Museum Building Commission.

§ 140-5.2: Repealed by Session Laws 1973, c. 476, s. 43.

Cross Reference. — For present provisions as to creation and organization of the Art Museum Building Commission, see §§ 143B-58 through 143B-61.

§ 140-5.3. Powers and duties enumerated. — The State Art Museum Building Commission shall have the following powers and duties:

(1) With the approval of the Governor and Council of State and the North Carolina State Capital Planning Commission, to determine the site for the building of the State Art Museum.

(2) To employ architects to prepare plans for the State Art Museum Building, to assist and advise the architects in the preparation of those plans, and to approve on behalf of the State all plans for the State Art Museum Building.

(3) To enter on behalf of the State into contracts for the construction of an art museum building and the employment of consultants and for the purchase of services, materials, furnishings, and equipment required in connection with the location, design, construction, furnishing, and equipping of said museum building.

(4) To supervise generally the location, construction, furnishing, equipping, renovating and care of the State Art Museum Building.

(5) To call upon the Department of Administration, the Attorney General, and any other State agency or officer for such assistance as the Commission may require in carrying out its duties.

(6) To appoint such advisory committees, composed of persons not members of the Commission, as the Commission deems necessary.

(7) To report to the General Assembly at each regular session concerning action taken by the Commission during the previous biennium in carrying out the provisions of this Article, and to make such special reports as may be requested by the General Assembly or the Governor.

(8) To receive gifts of funds from foundations, corporations and individuals and to receive public funds to aid in defraying the cost of said building, and surrounding facilities including landscaping. (1967, c. 1142, s. 2; 1969, c. 545.)

§ 140-5.4. Membership on Commission not to constitute a public office. —This Commission is hereby declared to be created for a special purpose and membership on such Commission shall not constitute a public office. (1967, c. 1142, s. 3.)

§ 140-5.5. General powers. — This Commission shall have all powers necessary in carrying out the general purpose of this Article. (1967, c. 1142, s. 4.)

§ 140-5.6. Right of eminent domain. — In the event that this State Art Museum Building Commission should find it necessary to acquire lands, rights-of-way or easements in order to carry out the purposes of this Article, and, in that event, if the Commission is unable to purchase the same from the owners thereof at an agreed price, or is unable to obtain a good and sufficient title therefor by purchase from the owners, then the Commission shall have and may exercise the right of eminent domain and may acquire any such lands, rights-of-way or easements necessary for the aforesaid purpose by condemnation in the manner prescribed in Article 9 of Chapter 136 of the General Statutes of North Carolina as amended. (1967, c. 1142, s. 5.)

Cited in State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

ARTICLE 2.

North Carolina Symphony Society.

§ 140-6: Repealed by Session Laws 1973, c. 476, s. 89.

Cross Reference. — For present provisions as to the organization of the North Carolina Symphony Society, Inc., see § 143B-94.

§ 140-7. Adoption of bylaws; amendments. — The said board of trustees, when organized under the terms of this Article, shall have authority to adopt bylaws for the Society and said bylaws shall thereafter be subject to change only by a three-fifths vote of a quorum of said board of trustees. (1943, c. 755, s. 3; 1947, c. 1049, s. 2.)

§ 140-8. Annual audit by State Auditor. — It shall be the duty of the State Auditor to make an annual audit of the accounts of the North Carolina Symphony Society, Incorporated, and make a report thereof to the General Assembly at each of its regular sessions, and the said Society shall be under the patronage and the control of the State. (1943, c. 755, s. 4.)

§ 140-9. Allocations from Contingency and Emergency Fund; expenditures. — The Governor and Council of State are hereby authorized to allot such sums as they may deem appropriate, from the Contingency and Emergency Fund, to the North Carolina Symphony Society, to aid in carrying on the activities of the said Society. All expenditures made by said Society shall be subject to the provisions of G.S. 143-1 to 143-34, inclusive. (1943, c. 755, s. 5; 1955, c. 1309.)

§ 140-10. Counties and municipalities authorized to make contributions. —The governing body of any county or incorporated municipality is hereby authorized and empowered to appropriate and make voluntary contributions out of nontax funds to the North Carolina Symphony Society. (1953, c. 1212.)

§ 140-10.1. Exempt from certain taxes. — The North Carolina Symphony Society, Incorporated, shall be exempt from all privilege license and gross receipts taxes, whether imposed by Article 2, Schedule B, Chapter 105 of the North Carolina General Statutes, or otherwise. (1969, c. 100.)

ARTICLE 3.

North Carolina Art Society.

§ 140-11: Repealed by Session Laws 1973, c. 476, s. 81.

Cross Reference. — As to the organization of the North Carolina Art Society, see § 143B-89.

§ 140-12. Department of Administration authorized to provide space for Art Society. — Subject to the approval of the Governor and the Advisory Budget Commission, the Department of Administration is authorized and empowered to set apart, for the administration of the affairs of the State Art Society, Incorporated, space in any of the public buildings in the City of Raleigh which may be so used without interference with the conduct of the business of the State. (1961, c. 1152.)

§ 140-13. Annual audit by State Auditor; report to General Assembly. — It shall be the duty of the State Auditor to make an annual audit of the accounts of the North Carolina Art Society, Incorporated, and to make report thereof to the General Assembly at each of its regular sessions. (1961, c. 1152; 1977, c. 702, s. 1.)

Editor's Note. — The 1977 amendment deleted "State" preceding "Art Society, Incorporated."

§ 140-14. North Carolina Art Society as membership arm of the North Carolina Museum of Art; promotion of public appreciation of art; organization of art exhibits, etc. — The North Carolina Art Society, Incorporated, shall be the membership arm of the North Carolina Museum of Art, the means whereby citizens of North Carolina can support their museum through individual or corporate memberships in the Society and through participation in its diverse programs. It shall be the duty of the North Carolina Art Society to promote the public appreciation of art and its role in the development of civilization; to organize State and regional art exhibits, including works by contemporary North Carolina artists; and to do all other things deemed necessary to advance the objectives of the Society. (1961, c. 1152; 1977, c. 702, s. 2.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 140-15. Exemption from taxes. — All gifts made to the North Carolina State Art Society, Incorporated, shall be exempt from State gift and inheritance taxes, and objects of art held by the Society shall be exempt from ad valorem taxes. (1961, c. 1152.)

Chapter 140A.

State Awards System.

Sec.
140A-1. Annual awards established; form and design.
140A-2. Fields of recognition; periods covered.
140A-3. Annual award to native living outside State.
140A-4. [Repealed.]
140A-5. Selection of recipients for awards.
140A-6. Administration expense.

§ 140A-1. Annual awards established; form and design. — The State of North Carolina hereby establishes annual awards, not to exceed six in number, each bearing the name of the recipient, with an appropriate inscription reciting the reason for the award, which form and design shall be approved by the Governor and Council of State. (1961, c. 1143, s. 1.)

Cross Reference. — As to the North Carolina Awards Committee, see §§ 143B-83, 143B-84.

§ 140A-2. Fields of recognition; periods covered. — These recognitions shall be known as the North Carolina Awards for Literature, Science, the Fine Arts and Public Service, and shall be conferred upon citizens of North Carolina for the most notable attainments in these respective fields during the current year, terminating four months before the date of award, though such distinctions can be exceptionally conferred, with the approval of the Governor and the Council of State, for eminence achieved during years prior to the award. (1961, c. 1143, s. 2.)

§ 140A-3. Annual award to native living outside State. — One award shall annually be made to a native-born North Carolinian, living outside of North Carolina, for preeminent accomplishment in one of the above fields of creative endeavor. (1961, c. 1143, s. 3.)

§ 140A-4: Repealed by Session Laws 1973, c. 476, s. 73.

§ 140A-5. Selection of recipients for awards. — The recipients of the awards shall be chosen by a committee named by the North Carolina Awards Committee, for each category of achievement, but no award shall be made in any field unless the committee of awards deems the recognized accomplishment to be outstanding in merit, value, and distinction. (1961, c. 1143, s. 5; 1973, c. 476, s. 73.)

§ 140A-6. Administration expense. — The expense of administering this Chapter shall be paid out of the Contingency and Emergency Fund subject to the approval of the Governor and Council of State. (1961, c. 1143, s. 6.)

Chapter 141.

State Boundaries.

Sec.
141-1. Governor to cause boundaries to be established and protected.
141-2. Payment of expenses of establishing boundaries.
141-3. Appointment of arbitrators.
141-4. Disagreement of arbitrators reported to General Assembly.

Sec.
141-5. Approval of survey.
141-6. Eastern boundary of State; jurisdiction over territory within littoral waters and lands under same.
141-7. [Repealed.]
141-8. Northern lateral seaward boundary.

§ 141-1. Governor to cause boundaries to be established and protected. —The Governor of North Carolina is hereby authorized to appoint two competent commissioners and a surveyor and a sufficient number of chainbearers, on the part of the State of North Carolina, to act with the commissioners or surveyors appointed or to be appointed by any of the contiguous states of Virginia, Tennessee, South Carolina, and Georgia, to return and remark, by some permanent monuments at convenient intervals, not greater than five miles, the boundary lines between this State and any of the said states.

The Governor is also authorized, whenever in his judgment it shall be deemed necessary to protect or establish the boundary lines between this State and any other state, to institute and prosecute in the name of the State of North Carolina any and all such actions, suits, or proceedings at law or in equity, and to direct the Attorney General or such other person as he may designate to conduct and prosecute such actions, suits, or proceedings. (1881, c. 347, s. 1; Code, s. 2289; 1889, c. 475, s. 1; Rev., s. 5315; 1909, c. 51, s. 1; C. S., s. 7396.)

Line Between North Carolina and Tennessee. — Under the Acts of 1821 of the States of North Carolina and Tennessee confirming the boundary line between the two states "as run and marked" by the joint commission, when it is clearly shown where the line between two known points but a few miles apart was run and marked by the commission, such line must be accepted by the courts, in a suit between private persons, as the true and ancient boundary, even though it now appears that a different line between such points might more accurately conform to a general call in the act of cession for "the extreme height" of a certain mountain for a distance of 100 miles. Stevenson v. Fain, 116 F. 147 (6th Cir. 1902), appeal dismissed, 195 U.S. 165, 25 S. Ct. 6, 49 L. Ed. 142 (1904).

§ 141-2. Payment of expenses of establishing boundaries. — When the line has been rerun and remarked as above provided between this State and any of the contiguous states, or such portion of said lines as shall be mutually agreed by the commissioners, the Governor is authorized to issue his warrant upon the State Treasurer for such portion of the expenses as shall fall to the share of this State. (1881, c. 347, s. 2; Code, s. 2290; 1889, c. 475, s. 2; Rev., s. 5316; C. S., s. 7397.)

§ 141-3. Appointment of arbitrators. — If any disagreement shall arise between the commissioners, the Governor of this State is hereby authorized to appoint arbitrators to act with similar officers to be appointed by the other states in the settlement of the exact boundary. (1881, c. 347, s. 3; Code, s. 2291; 1889, c. 475, s. 3; Rev., s. 5317; C. S., s. 7398.)

§ 141-4. Disagreement of arbitrators reported to General Assembly. — In case of any serious disagreement and inability on the part of the said arbitrators to agree upon said boundary, such fact shall be reported by the Governor to the next General Assembly for their action. (1881, c. 347, s. 4; Code, s. 2292; 1889, c. 475, s. 4; Rev., s. 5318; C. S., s. 7399.)

§ 141-5. Approval of survey. — When the commissioners shall have completed the survey, or so much as shall be necessary, they shall report the same to the Governor, who shall lay the same before the Council of State; and when the Governor and the Council of State shall have approved the same the Governor shall issue his proclamation, declaring said lines to be the true boundary line or lines, and the same shall be the true boundary line or lines between this and the states above referred to. (1881, c. 347, s. 5; Code, s. 2293; 1889, c. 475, s. 5; Rev., s. 5319; C. S., s. 7400.)

§ 141-6. Eastern boundary of State; jurisdiction over territory within littoral waters and lands under same. — (a) The Constitution of the State of North Carolina, adopted in 1868, having provided in Article I, Sec. 34, that the "limits and boundaries of the State shall be and remain as they now are," and the eastern limit and boundary of the State of North Carolina on the Atlantic seaboard having always been, since the Treaty of Peace with Great Britain in 1783 and the Declaration of Independence of July 4, 1776, one marine league eastward from the Atlantic seashore, measured from the extreme low-water mark, the eastern boundary of the State of North Carolina is hereby declared to be fixed as it has always been at one marine league eastward from the seashore of the Atlantic Ocean bordering the State of North Carolina, measured from the extreme low-water mark of the Atlantic Ocean seashore aforesaid.

(b) The State of North Carolina shall continue as it always has to exercise jurisdiction over the territory within the littoral waters and ownership of the lands under the same within the boundaries of the State, subject only to the jurisdiction of the federal government over navigation within such territorial waters.

(c) The Governor and the Attorney General are hereby directed to take all such action as may be found appropriate to defend the jurisdiction of the State over its littoral waters and the ownership of the lands beneath the same. (1947, c. 1031, ss. 1-3; 1969, c. 541, s. 1.)

Editor's Note. — The reference to the Constitution in this section is to the Constitution adopted in 1868, as amended. See now N.C. Const., Art. XIV, § 2.

Quoted in State ex rel. Bruton v. Flying "W" Enterprises, Inc., 273 N.C. 399, 160 S.E.2d 482 (1968).

§ 141-7: Repealed by Session Laws 1977, c. 342.

§ 141-8. Northern lateral seaward boundary. — The lateral seaward boundary between North Carolina and Virginia eastward from the low-water mark of the Atlantic Ocean shall be and is hereby designated as a line beginning at the intersection of the low-water mark of the Atlantic Ocean and the existing North Carolina-Virginia boundary line; thence due east on a true 90 degree bearing to the seaward jurisdictional limit of North Carolina; such boundary line to be extended on the true 90 degree bearing as far as a need for further delineation may arise. (1969, c. 841; 1971, c. 452, s. 1.)

Editor's Note. — Former § 141-8, enacted by Session Laws 1969, c. 841, provided that that section should stand repealed should the Congress of the United States not ratify, confirm, adopt or otherwise consent to the effect of the same by Nov. 1, 1970. Congress did not consent, and the section enacted in 1969 therefore stood repealed.

Section 2, c. 452, Session Laws 1971, provides: "This act shall become effective upon ratification, and with approval thereof, and concurrence therein, by the General Assembly of Virginia and upon the approval and consent to this act by the Congress of the United States."

Chapter 142.

State Debt.

Article 1.

General Provisions.

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142-1. How bonds executed; interest coupons attached; where payable; not to be sold at less than par.
142-2. Title of act and year of enactment recited in bonds.
142-3. Record of bonds kept by State Treasurer.
142-4. Books for registration and transfer.
142-5. Registration as to principal.
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142-7. No charge for registration.
142-8. Application of §§ 142-1 to 142-9.
142-9. Duties performed by other officers.
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Article 2.

Borrowing Money in Emergencies and in Anticipation of Collection of Taxes.

142-16. Governor and Council of State may borrow on note.
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Refunding Bonds.

142-20. Title of Article.
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142-38. Expenses of Commission.
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Article 5.

Sinking Funds for Highway Bonds.

142-44. Highway bonds; annual payments.
142-45. Highway bonds not issued; annual payments.
142-46. Source of funds.

Article 5A.

Exchange and Cancellation of Bonds Held in Sinking Funds; Investment of Moneys.

142-47. Exchange of securities.
142-48. Investment of sinking funds.
142-49. Cancellation of highway bonds in sinking funds; increase of payments to funds.

Article 6.

Citations to Bond and Note Acts.

Article 7.

General Fund Bond Sinking Fund.

142-50. Title of Article.
142-51. Creation of fund.
142-52. Amount placed in fund.
142-53. Merger of general fund bond sinking funds previously created.
142-54. Provisions of Sinking Fund Commission Act applicable.

ARTICLE 1.

General Provisions.

§ 142-1. How bonds executed; interest coupons attached; where payable; not to be sold at less than par. — All bonds or certificates of debt of the State shall be signed by the Governor, and countersigned by the State Treasurer, and sealed with the great seal of the State, and shall be made payable to bearer unless registered as hereinafter provided. The principal shall be made payable by the State at a day named in the bonds or certificates. Interest coupons shall be attached to the bonds or certificates unless they be bonds or certificates registered as to both principal and interest, and the bonds, certificates and coupons shall be made payable at such banks or trust companies within or without the State as shall be designated by the State Treasurer, or at the office of the State Treasurer in Raleigh. Any bank or trust company serving as a paying agent may be paid such reasonable fees and charges for such services as shall be agreed upon by and between such bank or trust company and the State Treasurer. No original bond or certificate of debt of the State shall be sold for a sum less than the par value thereof, nor shall any such bond or certificate, issued in lieu of a transferred bond or certificate, be payable elsewhere than may be the original, except by the consent of the holder it may be made payable at the State Treasury. (1848, c. 89, s. 22; 1852, c. 9; c. 10, s. 10; R. C., c. 90, s. 3; Code, s. 3563; Rev., s. 5020; C. S., s. 7401; Ex. Sess. 1921, c. 66, ss. 1, 2; 1977, c. 405.)

Editor's Note. — The 1977 amendment rewrote this section.

Cited in Galloway v. Jenkins, 63 N.C. 147 (1869).

§ 142-2. Title of act and year of enactment recited in bonds. — In every bond or certificate of debt issued by the State, and in the body thereof, shall be set forth the title of the act, with the year of its enactment, under the authority of which the same may be issued; or reference shall be made thereto by the number of the Chapter, and the year of the legislative session. (1850, c. 90, s. 6; R. C., c. 90, s. 6; Code, s. 3566; Rev., s. 5023; C. S., s. 7402.)

§ 142-3. Record of bonds kept by State Treasurer. — The State Treasurer shall enter in a book to be kept for that purpose a memorandum of every bond or certificate of debt of the State, issued or to be issued under any act whatever, together with the numbers, dates of issue, when and where payable, at what premium, and to whom the same may have been sold or issued. (1852, c. 10, s. 2; R. C., c. 90, s. 4; Code, s. 3564; Rev., s. 5021; C. S., s. 7403.)

§ 142-4. Books for registration and transfer. — The State Treasurer shall keep in his office a register or registers for the registration and transfer of all bonds and certificates of the State heretofore or hereafter issued, in which he may register any bond or certificate at the time of its issue or at the request of the holder. When any bond or certificate shall have been registered as hereinafter provided, the State Treasurer shall enter in a manner to be of easy and ready reference, a description of said bond, or certificates giving the number, series, date of issue, denomination, by whom signed, and such other data as may be necessary for the ready identification thereof, together with the name of the person in whose name the same is then to be registered and whether in his individual capacity or in a fiduciary relation, and if the latter, for whose benefit the same is to be registered. (1848, c. 37, s. 5; 1850, c. 58, s. 4; 1852, c. 11; R. C., c. 90, s. 2; Code, s. 3562; Rev., s. 5019; C. S., s. 7404; Ex. Sess. 1921, c. 66, s. 3.)

§ 142-5. Registration as to principal. — Upon the presentation at the office of the State Treasurer of any bond or certificate that has heretofore been or may hereafter be issued by the State, or upon the first issuance of any bond or certificate, the same may be registered as to principal in the name of the holder upon such register, such registration to be noted on the reverse of the bond or certificate by the State Treasurer. The principal of any bond or certificate so registered shall be payable only to the registered payee or his legal representative, and such bond or certificate shall be transferable to another holder or back to bearer only upon presentation of the State Treasurer with a written assignment acknowledged or approved in a form satisfactory to the Treasurer. The name of the registered assignee shall be written in said register and upon any bond or certificate so transferred. A bond or certificate so transferred to bearer shall be subject to future registration and transfer as before. (1883, c. 25; Code, s. 3568; 1887, c. 287; Rev., s. 5025; C. S., s. 7405; Ex. Sess. 1921, c. 66, s. 4.)

§ 142-6. Registration as to principal and interest. — (a) If, upon the registration of any such bond or certificate dated prior to January 1, 1965, or at any time after such registration, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be canceled by the Treasurer, and he shall sign a statement endorsed upon such bond or certificate of the cancellation of all unmatured coupons and of the fact that such bond or certificate has been converted into a fully registered bond or certificate, and shall make like entry in the said register. Thereafter the interest evidenced by such canceled coupons shall be paid at the time provided therein, to the registered owner or his legal representatives, in New York exchange, mailed to his address, unless he shall have requested the State Treasurer to pay such interest in funds current at the State capital, which request shall be entered in the said register.

(b) If, upon the registration of any such bond or certificate dated on or after January 1, 1965, or at any time after such registration, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, shall be surrendered, such coupons shall be detached and retained in the custody of the State Treasurer, and the State Treasurer shall endorse upon such bond or certificate the fact that such bond or certificate has been converted into a fully registered bond or certificate, and shall make like entry in said register. Thereafter the interest evidenced by such detached coupons shall be paid at the times provided therein to the registered owner or his legal representatives, in New York exchange, mailed to his address, unless he shall have requested the State Treasurer to pay such interest in funds current at the State capital, which request shall be entered in said register. Any such bond or certificate, if converted into a bond or certificate registered as to both principal and interest, may be reconverted at the expense of the registered owner into a coupon bond or certificate upon presentation thereof to the State Treasurer, accompanied by an instrument duly executed by the registered owner or his legal representatives in such form as shall be satisfactory to the State Treasurer; upon any such reconversion the State Treasurer shall reattach thereto the coupons representing the interest to become due thereafter on such bond or certificate to the date of maturity and shall make notation upon such bond or certificate whether such bond or certificate is registered as to principal alone or is payable to bearer, and shall make like entry in said register and he shall cancel any detached coupons retained by him representing interest that has been paid. (1856, c. 16; 1883, c. 25, s. 2; Code, s. 3569; 1887, c. 287, s. 2; Rev., s. 5026; C. S., s. 7406; Ex. Sess. 1921, c. 66, s. 5; 1965, c. 181, s. 1.)

§ 142-7. No charge for registration. — There shall be no charge for the registration of any bond or certificate whether registered at the time of issuance thereof or subsequently registered, and no charge for the transfer of registered bonds and certificates shall be made. (1887, c. 287, ss. 4, 5; Rev., s. 5027; C. S., s. 7407; Ex. Sess. 1921, c. 66, s. 6; 1925, c. 49.)

§ 142-8. Application of §§ 142-1 to 142-9. — General Statutes 142-1 to 142-9, both inclusive, as amended, shall be applicable to all bonds or certificates of the State heretofore issued and now outstanding, and to all bonds or certificates of the State that may hereafter be issued in accordance with any law now in force or hereafter to be enacted. (Code, s. 3570; 1887, c. 287, s. 3; Rev., s. 5028; C. S., s. 7408; Ex. Sess. 1921, c. 66, s. 7; 1965, c. 181, s. 2.)

§ 142-9. Duties performed by other officers. — If the Council of State shall at any time find that either the Governor or the State Treasurer is unable by reason of absence, disability, or otherwise, to sign any bonds or certificates, the Lieutenant-Governor may sign the same in lieu of the Governor, and they may be signed in lieu of the Treasurer by any member of the Council of State designated by it. (1864-5, c. 24; Code, s. 3567; Rev., s. 5024; C. S., s. 7409; Ex. Sess. 1921, c. 66, s. 8.)

§ 142-10. Chief clerk may issue when Treasurer unable to act. — Whenever it shall appear by formal finding of the Governor and Council of State, within seven days before any bonds or notes of the State or any interest thereon shall fall due, that it is advisable to issue notice of the State to provide for the renewal or payment of such bonds, notes or interest and that the State Treasurer is unable for any reason to negotiate or to issue such notes, it shall be the duty of the chief clerk of the State treasury, if the issuance of such notice shall have been authorized by law, upon certification to him of such finding, and in the name of the State Treasurer, to make all necessary negotiations and to sign and deliver such notes for value and to attach thereto the seal of the State Treasurer. (1927, c. 12.)

§ 142-11. When bonds deemed duly executed. — State bonds duly authorized by law and approved by the Governor and Council of State shall be regarded as duly executed by proper officers if signed and sealed while in office by the officer or officers then authorized to sign and seal the same, notwithstanding one or more of such officers shall not be in office at the time of actual delivery of such bonds. (1925, c. 2.)

§ 142-12. State bonds exempt from taxation. — The original bonds or certificates of debt of the State, which have been issued since the first day of January, 1853, or which may hereafter be issued under the authority of any act whatever, as likewise the bonds and certificates substituted for such original bonds and certificates, shall be, they and the interest accruing thereon, exempt from taxation. (1852, c. 10, s. 4; R. C., c. 90, s. 5; Code, s. 3565; Rev., s. 5022; C. S., s. 7410.)

§ 142-13. Destruction of canceled bonds, notes and coupons. — All canceled bonds, notes and interest coupons of the State may be destroyed in one of the following ways, in the discretion of the Treasurer:

(1) Method 1. The Treasurer shall make an entry in a substantially bound book kept by him for the purpose of recording the destruction of bonds, notes and coupons, showing
  a. With respect to bonds and notes, the designation, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount.
  b. With respect to coupons, the designation and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity and total amount of coupons.

After this entry has been made, the paid bonds, notes or coupons shall be destroyed, by either burning or shredding, in the presence of the Council of State. Each member of the Council of State in attendance shall certify under his hand in the book kept by the Treasurer that he saw the bonds, notes or coupons destroyed. Canceled bonds, notes or coupons shall not be destroyed until after one year from the date of payment.

(2) Method 2. The Treasurer may contract with the bank or trust company acting as paying agent for a bond issue for the destruction of bonds and interest coupons which have been canceled by the paying agent. The contract shall require that the paying agent give the Treasurer a written certificate of each destruction containing the same information required by Method 1 to be entered in the record of destroyed bonds and coupons. The certificates shall be filed among the permanent records of the Treasurer. Canceled bonds or coupons shall not be destroyed until one year from the date of payment.

The provisions of G.S. 121-5 and 132-3 shall not apply to any such paid bonds, notes or coupons. (1879, c. 98, s. 8; Code, s. 3578; Rev., s. 5035; C. S., s. 7415; 1941, c. 28; 1975, c. 527.)

Editor's Note. — The 1975 amendment rewrote this section.

§ 142-14. Issuance of temporary bonds. — Whenever the State Treasurer shall be authorized by law to issue bonds or notes of the State, and all acts, conditions and things required by law to happen, exist and be performed, before the delivery thereof for value, shall have happened, shall exist and shall have been performed, except the printing, lithographing or engraving of the definitive bonds or notes authorized and the execution thereof, the State Treasurer is authorized, by and with the consent of the Governor and Council of State, to issue and deliver for value temporary bonds or notes, with or without coupons, which may be printed or lithographed in any denomination or denominations which may be a multiple of one thousand dollars ($1,000), and shall be signed and sealed as shall be provided for the signing and sealing of such definitive bonds or notes, and shall be substantially of the tenor of such definitive bonds or notes except as herein otherwise provided and except that such temporary bonds or notes shall contain such provisions as the Treasurer may elect as to the conditions of payment of the semiannual interest thereon. Every such temporary bond or note shall bear upon its face the words "Temporary Bond (or Note) Exchangeable for Definitive Bond." Upon the completion and execution of the definitive bonds or notes, such temporary bonds or notes shall be exchangeable without charge therefor to the holder of such temporary bonds or notes for definitive bonds or notes of an equal amount of principal. Such exchange shall be made by the Treasurer or by a bank or trust company in North Carolina or elsewhere appointed by him as agent which shall have a capital and surplus of not less than the amount of the definitive bonds or notes to be so exchanged, and in making such exchange the Treasurer shall detach from the definitive bonds or notes all coupons which represent interest theretofore paid upon the temporary bonds or notes to be exchanged therefor, and shall cancel all such coupons; and upon such exchange such temporary bonds or notes and the coupons attached thereto, if any, shall be forthwith canceled by the Treasurer of such agent. Until so exchanged, temporary bonds and notes issued under the authority hereof shall in all respects be entitled to all the rights and privileges of the definitive securities. (1925, c. 43.)

§ 142-15. Reimbursement of Treasurer for interest. — Whenever it shall become necessary for the State Treasurer to borrow money to provide the maintenance fund for any State institution, the said Treasurer is authorized to deduct from the sum appropriated for maintenance of said institution the amount of interest the Treasurer shall have to pay for the use of said fund. This section shall apply to all future laws creating a maintenance fund for any State institution, unless said laws shall specifically state otherwise. (1923, c. 210; C. S., s. 7466(a).)

§ 142-15.1. Lost, stolen, defaced, or destroyed State bonds. — (a) If lost, stolen, or completely destroyed, any State bond, note, or coupon may be reissued in the same form and tenor upon the owner's furnishing to the satisfaction of the State Treasurer:

(1) Proof of ownership,
(2) Proof of loss or destruction,
(3) A surety bond in twice the face amount of bond or note and coupon, and
(4) Payment of the cost of preparing and issuing the new bond, note, or coupon.

(b) If defaced or partially destroyed, any State bond, note, or coupon may be reissued in the same form and tenor to the bearer or registered holder, at his expense, upon surrender of the defaced or partially destroyed bond, note, or coupon and on such other conditions as the State Treasurer may prescribe. The State Treasurer may also provide for authentication of defaced or partially destroyed bonds, notes, or coupons instead of reissuing them.

(c) Each new State bond, note, or coupon issued under this section shall be signed by the State Treasurer and shall contain a recital to the effect that it is issued in exchange for or replacement of a certain bond, note, or coupon (describing it sufficiently to identify it) and is to be deemed a part of the same issue as the original bond, note, or coupon.

(d) Before taking action under this section to replace, exchange, or authenticate a State bond, note, or coupon, the State Treasurer shall obtain the advice and consent of the Council of State. (1971, c. 780, s. 36.)

ARTICLE 2.

Borrowing Money in Emergencies and in Anticipation of Collection of Taxes.

§ 142-16. Governor and Council of State may borrow on note. — The Governor and Council of State may authorize and empower the State Treasurer in the intervals between sessions of the General Assembly, to borrow money on short term notes to meet any emergency arising from the destruction of the State's property, whether used by department or institution, or from some unforeseen calamity not amounting to its destruction. (1927, c. 49, s. 1.)

§ 142-17. Recital of facts entered on minutes; directions to Treasurer; limit of amount. — The Council of State, when such emergency arises during such interval, shall recite upon its minutes the facts out of which it does arise, and thereupon direct the State Treasurer to borrow from time to time money needed to meet such emergency or calamity, not exceeding, however in the whole, five hundred thousand dollars ($500,000) in the aggregate in the period between the adjournment of the present session of the General Assembly and the convening of the General Assembly in regular session in 1929 and not exceeding five hundred thousand dollars ($500,000) in the aggregate in any succeeding interval between regular sessions of the General Assembly, and to execute in behalf of the State of North Carolina notes for said money so borrowed to run not exceeding two years, and to bear interest not exceeding five percent (5%) per annum, payable semiannually. Said notes shall be in such forms as the State Treasurer may determine, and the obligations for the interest thereupon after maturity shall be receivable in payment of taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. The said notes shall be exempt from all State, county and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest thereon shall not be subject to taxation as for income, nor shall said notes be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1927, c. 49, s. 2.)

§ 142-18. Report to General Assembly. — At each, the next regular or extra session of the General Assembly, the Governor and Council of State shall report to it the proceedings of the Governor and Council of State in borrowing money under this Article, setting out fully the facts upon which they held that the emergency existed which authorized such borrowing. (1927, c. 49, s. 3.)

§ 142-19. Power given to Director of Budget to authorize State Treasurer to borrow money. — The Director of the Budget by and with the consent of the Governor and Council of State shall have authority to authorize and direct the State Treasurer to borrow, in the name of the State and pledge the credit of the State for the payment thereof, in anticipation of the collection of taxes, such sums as may be necessary to make the payment on appropriations to the various institutions, departments and agencies of the State as even as possible so as to preserve the best interest of the State in the conduct of the various institutions, departments and agencies of the State during each fiscal year. (1927, c. 195.)

ARTICLE 3.

Refunding Bonds.

§ 142-20. Title of Article. — This Article shall be known and may be cited as the "State Refunding Bond Act." (1935, c. 445, s. 1.)

§ 142-21. Refunding bonds authorized for State. — The State Treasurer is hereby authorized, by and with the consent of the Governor and Council of State, to issue at any one time or from time to time bonds of the State for the purpose of refunding any or all bonds of the State then outstanding, but no such refunding bonds shall be issued except when such refunding may be accomplished at a saving to the State of North Carolina by securing a lower rate of interest than the interest rate on the bonds to be refunded. (1935, c. 445, s. 2.)

§ 142-22. Date and rate of interest; maturity. — Such refunding bonds shall bear such date or dates and such rate or rates of interest, not exceeding six percent (6%) per annum, payable semiannually, and shall mature at such time or times, not more than 40 years from date, as may be fixed by the Governor and Council of State. (1935, c. 445, s. 3.)

§ 142-23. Execution; interest coupons; registration; form and denomination. — Such refunding bonds shall be signed by the Governor and the State Treasurer, and sealed with the great seal of the State, and shall carry interest coupons which shall bear the signature of the State Treasurer, or a facsimile thereof, and such bonds shall be subject to registration as is now or may hereafter be provided by law for State bonds, and the form and denomination thereof shall be such as the State Treasurer may determine in conformity with this Article. (1935, c. 445, s. 4.)

§ 142-24. Sale of bonds. — Subject to determination by the Governor and Council of State as to the manner in which such bonds shall be offered for sale, whether by publishing notices in certain newspapers and financial journals or by mailing notices or by inviting bids by correspondence or otherwise, the State Treasurer is authorized to sell such bonds at one time or from time to time at the best price obtainable, but in no case for less than par and accrued interest. (1935, c. 445, s. 5.)

§ 142-25. Proceeds directed to separate fund; use limited. — The proceeds of such bonds shall be placed by the State Treasurer in a separate fund and used solely for the purpose specified in G.S. 142-21. (1935, c. 445, s. 6.)

§ 142-26. State's credit and taxing power pledged. — The full faith, credit and taxing power of the State are hereby pledged for the payment of the principal and interest of the bonds herein authorized. (1935, c. 445, s. 7.)

§ 142-27. Coupons receivable for debts due State. — The coupons of said bonds after maturity shall be receivable in payment of all taxes, debts, dues, licenses, fines and demands due the State of any kind whatsoever. (1935, c. 445, s. 8.)

§ 142-28. Exemption from taxation. — All of such bonds and coupons shall be exempt from all State, county and municipal taxation or assessments, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, and the interest on such bonds shall not be subject to taxation as for income, nor shall such bonds or coupons be subject to taxation when constituting a part of the surplus of any bank, trust company, or other corporation. (1935, c. 445, s. 9.)

§ 142-29. Investment in bonds made lawful for fiduciaries. — It shall be lawful for all executors, administrators, guardians and fiduciaries generally, and all sinking fund commissions, to invest any moneys in their hands in such bonds. (1935, c. 445, s. 10.)

ARTICLE 4.

Sinking Fund Commission.

§ 142-30. Title of Article. — This Article shall be known as "The Sinking Fund Commission Act." (1925, c. 62, s. 1.)

§ 142-31. Creation; duties. — A State Sinking Fund Commission is hereby created, the members of which shall be the Governor, State Treasurer and Auditor, who shall serve without additional compensation. It shall be the duty of the Commission to see that the provisions of all sinking fund laws are complied with and to provide for the custody, investment and application of all sinking funds. The Commission and its members may call upon the Attorney General for legal advice as to their duties, powers and responsibilities hereunder. (1925, c. 62, s. 2.)

§ 142-32. To adopt rules; organization. — The Commission shall adopt rules for its organization and government and the conduct of its affairs. Its chairman shall be the Governor and its secretary the Auditor. All clerks and employees in the office of the Governor, Auditor and Treasurer may be called upon to assist the Commission. (1925, c. 62, s. 3.)

§ 142-33. Treasurer of Commission; liability. — The State Treasurer shall be ex officio treasurer of the Commission and the custodian of the sinking fund and the investments thereof. He and the sureties upon his official bond as State Treasurer shall be liable for any breach of faithful performance of his duties under this Article as well as his duties as State Treasurer, and his official bond shall be made to comply with this requirement. (1925, c. 62, s. 4.)

§ 142-34. Investment of sinking funds. — Moneys in the sinking funds herein shall not be loaned to any department of the State, but shall be invested by the Commission in:

(1) Bonds of the United States or bonds or securities fully guaranteed both as to principal and interest by the United States.
(2) Bonds or notes of the State of North Carolina, and in the obligations of any quasi-public corporation in which the State of North Carolina owns not less than fifty-one percent (51%) of its capital stock.
(3) Bonds of any other state whose full faith and credit are pledged to the payment of the principal and interest thereof.
(4) Bonds of any county in North Carolina, any city or town in North Carolina and any school district in North Carolina, provided such bonds are general obligations of the subdivision or municipality issuing the same and provided that there is no limitation of the rate of taxation for the payment of principal and interest of the bonds. (1925, c. 62, s. 5; 1931, c. 415; 1935, c. 146; 1937, c. 82; 1941, c. 17, s. 1.)

Cross Reference. — As to investment in bonds guaranteed by the United States, see § 53-44.

§ 142-35. Purchase of securities. — No such securities shall be purchased at more than the market price thereof, nor sold at less than the market price thereof. No securities shall be purchased except bonds of the United States, or bonds or securities fully guaranteed both as to principal and interest by the United States, or bonds or notes of the State of North Carolina, unless the vendor shall deliver with the securities an opinion of an attorney-at-law, believed by the Commission to be competent and to be recognized by investment dealers as an authority upon the law of public securities, to the effect that the securities purchased are valid and binding obligations of the issuing governmental agency or unit, unless the Commission shall be satisfied that such opinion can be readily obtained when required, it being the intention of this requirement to assure the Commission that such securities are valid and that they will not be unsalable by the Commission because of doubts as to the validity thereof. The Commission is empowered to appoint one or more of its members for the purpose of making purchases and sales of securities. (1925, c. 62, s. 6; 1941, c. 17.)

§ 142-36. Interest of securities held as part of sinking fund. — The interest and revenues received upon securities held for any sinking fund and any profit made on the resale thereof shall become and be a part of such sinking fund. Bonds and notes of the State of North Carolina purchased for any sinking fund shall not be canceled before maturity, but shall be kept alive, and the interest and principal thereof shall be paid into the sinking fund for which the same are held. (1925, c. 62, s. 7.)

§ 142-37. Registration of securities; custody thereof. — Where practicable, securities purchased for sinking funds shall be registered as to the principal thereof in the name of "The State of North Carolina for the sinking fund for" (here briefly identify the sinking fund) and may be released from such registration by the signature of the State Treasurer, but the Treasurer shall not make such release unless and until the securities to be so released shall have been sold by the Commission or until the Commission shall have ordered such release. The Treasurer may in his discretion keep all securities purchased for sinking funds in the vault in the revenue building or rent safety deposit boxes in responsible banks. (1925, c. 62, s. 8; 1947, c. 152.)

§ 142-38. Expenses of Commission. — The necessary expense of the Commission for the rental of a safety deposit box, publication of advertisements, postage, insurance upon securities in transit, etc., not exceeding one-twentieth of one percent ($^1/_{20}$ of 1%) of the amount in all sinking funds at the end of any fiscal year, shall be a charge upon the general fund. (1925, c. 62, s. 9.)

§ 142-39. Report of Commission. — The Commission shall make a report in writing to the General Assembly not later than the tenth day of each regular and extraordinary session thereof, stating the nature and amount of all receipts and disbursements of each sinking fund since the last preceding report, and the amount contained in each fund, and giving an itemized statement of all investments of each fund as to name of security, purpose of issuance, date of maturity and interest rate, which report shall be spread upon the journals of the Senate and House of Representatives. (1925, c. 62, s. 10.)

§ 142-40. Embezzlement by member of Commission. — If any member of the Commission shall embezzle or otherwise willfully and corruptly use or misapply any funds or securities in any sinking fund for any purpose other than that for which the same are held, such member shall be guilty of a felony, and shall be fined not more than ten thousand dollars ($10,000), or imprisoned in the State's Prison not more than 20 years, or both, at the discretion of the court. (1925, c. 62, s. 11.)

§ 142-41. False entry by secretary or treasurer. — If the secretary or treasurer of the Commission shall wittingly or falsely make, or cause to be made, any false entry or charge in any book kept by him as such officer, or shall wittingly or falsely form, or cause to be formed, any statement of the condition of any sinking fund, or any statement required by this Article to be made, with intent in any of said instances to defraud the State, or any person or persons, such secretary or treasurer, as the case may be, shall be guilty of a misdemeanor and fined at the discretion of the court not exceeding three thousand dollars ($3,000), and imprisoned for not exceeding three years. (1925, c. 62, s. 12.)

§ 142-42. Interest of member in securities; removal. — If any member of the Commission shall have any pecuniary interest, either directly or indirectly, proximately or remotely, in any securities purchased or sold by the Commission, or shall act as agent for any investor or dealer for any securities to be purchased or sold by the Commission, or shall receive directly or indirectly any gift, emolument, reward, or promise of reward for his influence in recommending or procuring any such purchase or sale, he shall forthwith be removed from his position, and shall upon conviction be guilty of a misdemeanor, and fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), and be imprisoned, in the discretion of the court. (1925, c. 62, s. 13.)

§ 142-43. Report of sufficiency of sinking fund. — When the funds or securities in any sinking fund shall be found by the Sinking Fund Commission to be sufficient with interest accretions reasonably to be expected for the retirement at maturity of all bonds for which such sinking fund is held, and when the Commission shall file a statement of such finding in the office of the Auditor and in the office of the State Treasurer, further payments into such sinking fund shall be suspended and shall not again be made unless such fund should thereafter become insufficient for any reason. (1925, c. 62, s. 18.)

ARTICLE 5.

Sinking Funds for Highway Bonds.

§ 142-44. Highway bonds; annual payments. — For the retirement of the principal of nineteen million five hundred thousand dollars ($19,500,000) highway serial bonds heretofore issued under Chapter two, Public Laws of 1921, regular session, a sinking fund is created, into which fund the State Treasurer shall pay during the fiscal year ending June 30, 1924, from any funds not heretofore pledged or appropriated, the sum of one hundred thousand dollars ($100,000). (1923, c. 188, s. 2; C. S., s. 7472(s); 1925, c. 62, s. 15.)

Cross References. — As to transfer of sinking fund created by this section to general fund bond sinking funds, see § 142-53. As to repeal of this Article insofar as it conflicts with Article 7 of this Chapter, see note under § 142-50.

§ 142-45. Highway bonds not issued; annual payments. — For the retirement of the principal of bonds issued for highway purposes, Chapter two, Public Laws of 1921, regular session, over and above the nineteen million five hundred thousand dollars ($19,500,000) heretofore issued, a sinking fund is hereby created into which fund the State Treasurer shall pay during the fiscal year ending June 30, 1924, from any funds not heretofore pledged or appropriated, the sum of four hundred thousand dollars ($400,000). (1923, c. 188, s. 3; C. S., s. 7472(t); 1925, c. 62, s. 16.)

§ 142-46. Source of funds. — All of the highway bond sinking fund payments to be made under G.S. 142-44 and 142-45, aggregating five hundred thousand dollars ($500,000) annually, shall be made from the revenues collected under the provisions of said Chapter two, Public Laws of 1921, if such revenues are sufficient therefor after setting aside therefrom the moneys provided by said Chapter two for the maintenance of the Board of Transportation and the expenses of collecting highway revenues, and after setting aside moneys necessary for the payment of maturing principal of and interest upon highway bonds of the State: provided, however, that no holder of any highway bonds of the State shall be prejudiced by this amendment or by any act amendatory of this section passed subsequent to the issuance of such bonds, and any such bondholder shall be entitled to all rights to which he would be entitled if no such amendment had been made. (1923, c. 188, s. 4; C. S., s. 7472(u); 1925, c. 45, s. 4; c. 133, s. 4; 1973, c. 507, s. 5.)

ARTICLE 5A.

Exchange and Cancellation of Bonds Held in Sinking Funds; Investment of Moneys.

§ 142-47. Exchange of securities. — The State Sinking Fund Commission is hereby authorized to exchange any bonds of the State which shall at any time be held as an investment of moneys in any sinking fund under its control for like principal amounts of bonds of the State which shall then be held as an investment of moneys in any other sinking fund under its control, and in each such exchange each such sinking fund shall be charged with the market value of the bonds received by it, plus the accrued interest thereon, and shall be credited with the market value of the bonds exchanged therefor, plus the accrued interest thereon. Any difference in the amounts of such charges and such credits shall be adjusted by making the appropriate transfer of moneys from one sinking fund to the other sinking fund. The market value of each bond so exchanged shall be determined by the Commission, and such determination shall be based, as far as practicable, upon the current offering prices of bankers and dealers, taking into account the interest rates borne by the bonds and their maturities. (1943, c. 321, s. 1.)

§ 142-48. Investment of sinking funds. — The State Sinking Fund Commission shall invest the moneys in the sinking funds created by G.S. 142-44 and 142-45 in highway bonds of the State unless the Commission shall determine that it would be more practicable, at the time of such investment, to invest such moneys in other bonds of the State or in other securities eligible for such investment. (1943, c. 321, s. 2.)

§ 142-49. Cancellation of highway bonds in sinking funds; increase of payments to funds. — If requested so to do by the Governor and Council of State, the State Sinking Fund Commission may at any time cancel any highway bonds of the State which are held in the sinking fund created by G.S. 142-44 and which are a part of the bonds for the payment of which said sinking fund was so created, and to cancel any highway bonds of the State which are held in the sinking fund created by G.S. 142-45 and which are a part of the bonds for the payment of which said sinking fund was so created.

Upon the cancellation of any highway bonds of the State which are held in the sinking fund created by G.S. 142-44, as hereinabove provided, the annual payment to be made into said sinking fund in each year after such cancellation shall be increased from one hundred thousand dollars ($100,000) to one hundred and fifty thousand dollars ($150,000). Upon the cancellation of any highway bonds of the State which are held in the sinking fund created by G.S. 142-45, as hereinabove provided, the annual payment to be made into said sinking fund in each year after such cancellation shall be increased from four hundred thousand dollars ($400,000) to six hundred thousand dollars ($600,000). (1943, c. 321, ss. 3-5.)

Cross Reference. — For list of highway bonds acts, see Chapter 136, Article 8.

ARTICLE 6.

Citations to Bond and Note Acts.

1. Bonds to fund bonds issued pursuant to any act of the General Assembly passed prior to May 20, 1861, exclusive of bonds issued for the construction of the North Carolina Railroad; bonds issued pursuant to 1865, c. 3; bonds issued pursuant to 1867, c. 56; bonds issued pursuant to an act ratified March 10, 1866, entitled "An Act to Provide for the Payment of the State Debt Contracted before the War"; bonds issued pursuant to an act ratified August 10, 1868, entitled "An Act to Provide for Funding the Matured Interest on the Public Debt"; or any registered certificates belonging to the Board of Education pursuant to an act of the General Assembly of 1867. Consolidated Statutes, ss. 7411-7414, 7416-7432; 1879, c. 98, s. 1; 1901, c. 126; 1909, c. 399; 1913, c. 131; 1919, c. 314.
2. Bonds for the care of the insane, and to pay the deficit in the account of the State Hospital at Morganton. Consolidated Statutes, ss. 7433-7436; 1909, c. 510.
3. Bonds for payment of State bonds issued pursuant to 1903, c. 750 and 1905, c. 543, and to pay the holders of bonds of the issue upon which the South Dakota judgment was rendered. Consolidated Statutes, ss. 7440-7444; 1909, c. 718; 1911, c. 73.
4. Bonds for State building. Consolidated Statutes, ss. 7437-7439; 1911, c. 66.
5. Bonds to relieve the deficit of the State treasury and to improve the new State building. Consolidated Statutes, ss. 7448-7452; 1913, c. 102.
6. Bonds for central heating plant. Consolidated Statutes, ss. 7445-7447; 1913, c. 143.
7. Bonds for construction and improvement of Caswell Training School at Kinston. Consolidated Statutes, ss. 5905-5912; 1911, c. 89, ss. 9, 10, 11; 1917, c. 269.
8. Bonds for permanently enlarging the State's educational and charitable institutions. Consolidated Statutes, ss. 7459-7463; 1917, c. 154; Joint Resolution No. 40, 1917; 1919, c. 44; 1919, c. 314.
9. Bonds for payment of North Carolina railroad bonds. Consolidated Statutes, ss. 7453-7458; 1919, c. 1; 1919, c. 11.

10. Notes in anticipation of the sale of bonds for permanent enlargement of certain State institutions. Consolidated Statutes, ss. 7464-7466, 7467-7472; 1919, c. 328.

11. Bonds to pay the notes authorized by 1921, c. 43. Consolidated Statutes, ss. 7472(z)-7472(ii); 1921, c. 107.

12. Bonds for permanent enlargement and improvement of educational and charitable institutions. Consolidated Statutes, ss. 7472(a)-7472(i); 1921, c. 165; Ex. Sess. 1921, c. 82.

13. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to county boards of education. 1921, c. 147.

14. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to the county boards of education. Consolidated Statutes, ss. 5688-5694; 1923, c. 136, ss. 278-284; 1925, c. 201.

15. Bonds for permanent enlargement and improvement of educational and charitable institutions. Consolidated Statutes, ss. 7472(j)-7472(q) ; 1923, cc. 162, 164; 1925, c. 192; 1927, c. 147; 1929, c. 295; 1935, c. 439; 1937, cc. 296, 392; Ex. Sess. 1938, c. 1.

16. Notes to balance the revenues and disbursements of the general fund at the close of the fiscal year of 1925. 1925, c. 112.

17. Notes for funding prison debt. 1925, c. 132.

18. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to county boards of education. 1927, c. 199.

19. Bonds for Industrial Farm Colony for Women. 1927, c. 219, ss. 14-24; 1931, c. 128.

20. Bonds to acquire and develop State prison farm. 1927, c. 152; 1931, c. 110.

21. Bonds for payment of notes and obligations issued pursuant to 1927, c. 49; 1931, c. 28.

22. Notes to balance the revenues and disbursements of the general fund at the close of the fiscal year of 1931, and to place the fiscal operations of the State for the biennium 1931-1933 upon a budgetary basis. 1931, c. 371, s. 2.

23. Funding Bond Act of 1933. 1933, c. 330.

24. Bonds for N.C. State stadium. 1933, c. 291; 1935, c. 62.

25. Notes to pay appropriations for 1935 and 1937. 1935, c. 129.

26. Notes for the purchase, by the State Textbook Purchase and Rental Commission, of textbooks and supplies for the pupils of the public schools of the State. 1935, c. 422, s. 6.

27. Special building fund bonds issued for the purpose of providing a special building fund to be loaned to the county boards of education. 1935, c. 201, ss. 1-8.

28. Bonds for the purchase, by the State Textbook Commission, of textbooks and supplies for the pupils of the public schools of the State. 1937, c. 169, ss. 7-10.

29. Bonds to reimburse for emergency advances. 1937, c. 193 (biennium 1937-1939).

30. Board of health bonds for revenue producing undertakings. 1937, c. 324.

31. New state office building bonds. 1937, c. 364.

32. Notes to pay appropriations for the biennium ending June 30, 1941. 1939, c. 77.

33. Validation of proceedings of the University of North Carolina relating to the issuance and payment of certain revenue bonds of the University authorized by 1935, c. 479, 1936, c. 2, and 1937, c. 323. 1939, c. 289.

34. North Carolina State College Athletic Stadium Loan Act. 1939, c. 399.

35. Bonds for the construction of an Eastern North Carolina Sanatorium for the Treatment of Tuberculosis. 1939, c. 325, ss. 7, 8, 9; 1941, c. 86, ss. 2, 2A.

36. Bonds to reimburse the State treasury for advances made therefrom for permanent improvements at certain State institutions and for purchasing books. 1939, c. 67.

37. Notes to pay appropriations for biennium ending June 30, 1943. 1941, c. 41.

38. Bonds to reimburse funds for emergency advances. 1941, c. 81.

39. Bonds for improvements at North Carolina State College of Agriculture and Engineering. 1941, c. 94.

40. Bonds to refund the outstanding athletic stadium bonds issued by the North Carolina State College of Agriculture and Engineering of the University of North Carolina, and bonds for the liquidation of the outstanding indebtedness of the athletic department of said institution. 1941, c. 169. See also c. 240.

41. Bonds or notes for the protection of the State's interest in the Atlantic and North Carolina Railroad. 1941, c. 170.

42. Bonds and notes for construction of a building and improvements at North Carolina State College of Agriculture and Engineering. 1941, c. 240.

43. Notes to pay appropriations for biennium ending June 30, 1945. 1943, c. 320.

44. Bonds for loan to Atlantic and North Carolina Railroad for rehabilitation of properties. 1943, c. 412.

45. Bonds for loan to Atlantic and North Carolina Railroad for refunding certain indebtedness. 1943, c. 443.

46. State Ports Bond Act of 1949. 1949, c. 820.

47. School plant construction and repair bonds. 1949, cc. 1020, 1249 (s. 22½), 1295.

48. State Mental Institutions Bond Act of 1953. 1953, c. 1148.

49. State Permanent Improvement Bond Act of 1953. 1953, c. 1149.

50. Bonds for dormitories at University of North Carolina and certain colleges. 1955, c. 1289.

51. State Capital Improvement Bond Act of 1957. 1957, c. 935.

52. Capital Improvement State Voted Bond Improvement Act of 1959. 1959, c. 1038.

53. State Capital Improvement Act of 1959. 1959, c. 1039; 1965, c. 1201.

54. State Capital Improvement Legislative Bond Act of 1961. 1961, c. 951.

55. State Capital Improvement Voted Bond Act of 1961. 1961, c. 1037.

56. Stadium Revenue Bond Act. 1963, c. 686.

57. State Capital Improvement Legislative Bond Act of 1963. 1963, c. 838.

58. Bonds to provide funds for public school facilities in the counties of the State. 1963, c. 1079.

59. Capital Improvement Legislative Bond Act of 1965. 1965, c. 915.

Cross References. — As to refunding bonds issued under Session Laws 1955, c. 1289, see § 116-195.

For list of highway bond acts, see Chapter 136, Article 8.

Cited in Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966) (subdivision 58).

ARTICLE 7.

General Fund Bond Sinking Fund.

§ 142-50. Title of Article. — This Article shall be known as "the State General Fund Bond Sinking Fund Act of 1945." (1945, c. 3, s. 1.)

Laws Repealed. — Section 2 of the act inserting this Article provides: "All laws and clauses of laws in conflict with this act, and in particular Chapter six of the Session Laws of one thousand nine hundred and forty-three, the State Post-War Reserve Fund Act, insofar as it conflicts with the appropriations herein made, and Chapter one hundred and eighty-eight of one thousand nine hundred and twenty-three, Chapter one hundred and ninety-two of one thousand nine hundred and twenty-five, Chapters one hundred and forty-seven, one hundred and fifty-two and two hundred and nineteen of one thousand nine hundred and twenty-seven, insofar as contributions are required to be made to these sinking funds for the redemption of general fund bonds covered by these acts, which bonds are provided for under the general fund bond sinking fund established by this act, are hereby repealed."

§ 142-51. Creation of fund. — There is hereby created a State General Fund Bond Sinking Fund for the purpose of retiring all outstanding general fund bonds and interest as they mature from time to time. (1945, c. 3, s. 1.)

§ 142-52. Amount placed in fund. — There is appropriated from the general fund of the State the sum of fifty-one million, five hundred eighty-five thousand and seventy-nine dollars ($51,585,079), which funds shall be taken from the general fund surplus, as may now exist or as may accrue by June 30, 1945, as far as possible and any additional amount necessary to provide the sum of fifty-one million, five hundred eighty-five thousand, and seventy-nine dollars ($51,585,079) shall be taken from the State Post-War Reserve Fund established under G.S. 143-191 to 143-194, and the amount necessary for this purpose is hereby appropriated from the State Post-War Reserve Fund, which sum so appropriated shall be transferred to "the State General Fund Bond Sinking Fund" and shall be used exclusively for the purpose of retiring the principal and interest on outstanding general fund bonds authorized by and issued under the authority of the following acts of the legislature, to wit:

Title of Issue	Chapter	Year
State hospital	510	1909
Refunding	399	1909
Administration	66	1911
School for feebleminded	87	1911
Refunding	73	1911
Improvement	102	1913
Funding	107	1921
Educational and charitable	165	1921
Educational and charitable	162	1923
Educational and charitable	192	1925
Educational and charitable	147	1927
Great Smoky Mountains Park (Serial)	48	1927
Farm Colony for Women	219	1927
The State prison farm	152	1927
World War veterans loan	97	1927
World War veterans loan	298	1929
General fund bonds (Debit balance)	330	1933
Educational and charitable	296	1937
State office building	365	1937
Permanent improvement	1	1938
Permanent improvement and school books	67	1939
Permanent improvement	240	1941
Permanent improvement	81	1941
Permanent improvement	86	1941

(1945, c. 3, s. 1; 1949, c. 655.)

§ 142-53. Merger of general fund bond sinking funds previously created. —The general fund bond sinking funds heretofore created under authority of Chapter 188 of the Public Laws of 1923, Chapter 192 of the Public Laws of 1925, Chapter 147 of the Public Laws of 1927, Chapter 152 of the Public Laws of 1927, and Chapter 219 of the Public Laws of 1927 for the purpose of retiring certain long term general fund bonds are hereby combined with, transferred to and made a part of "the State General Fund Bond Sinking Fund of 1945," and together with the sum of fifty-one million, five hundred eighty-five thousand, and seventy-nine dollars ($51,585,079) appropriated by this law shall be used to retire the general fund bonds and interest as they may mature from time to time. (1945, c. 3, s. 1.)

Editor's Note. — The 1923 act referred to in this section was codified as §§ 142-44 through 142-46.

§ 142-54. Provisions of Sinking Fund Commission Act applicable. — The moneys paid into "the State General Fund Bond Sinking Fund of 1945" herein provided for, shall in all respects, be subject to the requirements, limitations and provisions of Chapter 62 of the Public Laws of 1925, and as amended, and known as "the Sinking Fund Commission Act." (1945, c. 3, s. 1.)

Editor's Note. — The 1925 act referred to in this section was codified as §§ 142-30 through 142-45.

Chapter 143.

State Departments, Institutions, and Commissions.

Article 1.

Executive Budget Act.

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Article 1.1.

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ARTICLE 1.

Executive Budget Act.

§ 143-1. Scope and definitions. — This Article shall be known, and may be cited, as "The Executive Budget Act." Whenever the word "Director" is used herein, it shall be construed to mean "Director of the Budget." Whenever the word "Commission" is used herein, it shall be construed to mean "Advisory Budget Commission," if the context shows that it is used with reference to any power or duty belonging to the Department of Administration and to be performed by it, but it shall mean when used otherwise any State agency, and any other agency, person or commission by whatever name called, that uses or expends or receives any State funds. "State funds" are hereby defined to mean any and all moneys appropriated by the General Assembly of North Carolina, or moneys collected by or for the State, or any agency thereof, pursuant to the authority granted in any of its laws. (1925, c. 89, s. 1; 1929, c. 100, s. 1; 1957, c. 269, s. 2.)

§ 143-2. Purposes. — It is the purpose of this Article to vest in the Governor of the State a direct and effective supervision of all agencies, institutions, departments, bureaus, boards, commissions, and every State agency by whatsoever name now or hereafter called, including the same power and supervision over such private corporations and persons and organizations of all kinds that may receive, pursuant to statute, any funds either appropriated by, or collected for, the State of North Carolina, or any of its departments, boards, divisions, agencies, institutions and commissions; for the efficient and economical administration of all agencies, institutions, departments, bureaus, boards, commissions, persons or corporations that receive or use State funds; and for the initiation and preparation of a balanced budget of any and all revenues and expenditures for each session of the General Assembly.

The Governor shall be ex officio Director of the Budget. The purpose of this Article is to include within the powers of the Department of Administration all agencies, institutions, departments, bureaus, boards, and commissions of the State of North Carolina under whatever name now or hereafter known, and the change of the name of such agencies hereafter shall not affect or lessen the powers and duties of the Department of Administration in respect thereto.

The test as to whether an institution, department, agency, board, commission, or corporation or person is included within the purpose and powers and duties of the Director of the Budget shall be whether such agency or person receives for use, or expends, any of the funds of the State of North Carolina, including funds appropriated by the General Assembly and funds arising from the collection of fees, taxes, donations appropriative, or otherwise.

Notwithstanding the general language in this Article the expenditure of funds by or under the supervision and control of the State Auditor and the State Treasurer for their respective departments shall not, except as provided in G.S. 143-25, be subject to the powers of the Director of the Budget or the Department of Administration, it being intended that the State Auditor and the State Treasurer shall be independent of any fiscal control exercised by the Director of the Budget and shall be subject only to such control as may be exercised by the Advisory Budget Commission. (1925, c. 89, s. 2; 1929, c. 100, s. 2; 1955, c. 578, s. 1; c. 743; 1957, c. 269, ss. 1, 2.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" twice in the second paragraph. See § 143-344(a).

As Director of the Budget, the Governor has large powers in supervising the expenditures of State funds and in determining what appropriations shall be made by the General Assembly. The idea that our governments, federal, State and local, should be run in a businesslike fashion is gaining prevalence and the budget system in government is an attempt to carry out the wishes of the people that government shall be administered economically and efficiently. 4 N.C.L. Rev. 17.

§ 143-3. Examination of officers and agencies; disbursements. — The Director shall have power to examine under oath any officer or any head, any clerk or employee, of any department, institution, bureau, division, board, commission, corporation, association, or any agency; to cause the attendance of all such persons, requiring such persons to furnish any and all information desired relating to the affairs of such agency; to compel the production of books, papers, accounts, or other documents in the possession or under the control of such person so required to attend. The Director or his authorized representative shall have the right and the power to examine any State institution or agency, board, bureau, division, commission, corporation, person, and to inspect its property, and inquire into the method of operation and management.

The Director shall have power to have the books and accounts of any of such agencies or persons audited, and supervise generally the budget accounts of such departments, institutions and agencies within the terms of this Article. The Director may require that the cost of making all audits shall be paid from the regular maintenance appropriation made by the General Assembly for such department, institution or agency which may be thus audited.

It shall be the duty of the Director to recommend to the General Assembly at each session such changes in the organization, management and general conduct of the various departments, institutions and other agencies of the State, and included within the terms of this Article, as in his judgment will promote the more efficient and economical operation and management thereof.

The Director of the Budget under the provisions of the Executive Budget Act shall prescribe the manner in which disbursements of the several institutions and departments shall be made and may require that all warrants, vouchers or checks, except those drawn by the State Auditor and the State Treasurer, shall bear two signatures of such officers as will be designated by the Director of the Budget. (1925, c. 89, s. 3; 1929, c. 100, s. 3; c. 337, s. 4; 1969, c. 458, s. 3.)

§ 143-3.1. Transfer of functions. — Effective July 1, 1955, or as soon thereafter as practical but not later than July 1, 1956, the functions of preaudit of State agency expenditures, issuance of warrants on the State Treasurer for same, and maintenance of records pertaining to these functions shall be transferred from the Auditor's office to the Director of the Budget. All books, papers, reports, files and other records of the Auditor's office pertaining to and used in the performance of these functions shall be transferred to the Department of Administration, and office machinery and equipment used primarily in the performance of these functions shall be transferred to the Department of Administration. The Governor, with the advice and consent of the Advisory Budget Commission, is authorized to determine and declare the effective date of the transfer of these functions and to do all things necessary to effect an orderly and efficient transfer; and the Governor, with the advice and consent of the Advisory Budget Commission, is further authorized to transfer to the Department of Administration the unused portion of such funds as may have been appropriated to the Auditor's office for the 1955-57 biennium for the performance of the functions and duties transferred to the Director of the Budget under the provisions of this section. (1955, c. 578, s. 2; 1957, c. 269, s. 2.)

§ 143-3.2. Issuance of warrants upon State Treasurer. — Upon the transfer of functions from the Auditor's office to the Director of the Budget, as provided in G.S. 143-3.1, the Director of the Budget shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer; and to carry out this responsibility the Director shall designate a State Disbursing Officer whose duties shall be performed as a function of the Department of Administration. All warrants upon the State Treasurer shall be signed by the State Disbursing Officer, who before issuing same shall determine the legality of payment and the correctness of the accounts; provided that the State Auditor and the State Treasurer shall have the exclusive authority to issue all warrants for the operation of their respective department and such warrants shall be paid by the State Treasurer from the appropriations provided therefor; and provided further, that when considered expedient, due to its size or location, a State agency may upon approval of the Director of the Budget make expenditures through a disbursing account with the State Treasurer. All deposits in such disbursing accounts shall be by the State Disbursing Officer's warrant, and a copy of each voucher making withdrawals from such disbursing accounts, together with such supporting data as may be required by the Director of the Budget, shall be forwarded to the Department of Administration monthly or otherwise as may be required by the Director of the Budget; provided, however, that a central payroll unit operating under the Department of Administration may make deposits and withdrawals directly to and from a disbursing account which shall constitute a revolving fund for servicing payrolls passed through such central payroll unit. The State Disbursing Officer is authorized to use a facsimile signature machine in affixing his signature to warrants. The Director of the Budget shall secure insurance and/or a bond in an amount of not less than twenty-five thousand dollars ($25,000) to protect the State of North Carolina against any misuse or unauthorized use of the facsimile signature machine by any person. It is further required that the State Disbursing Officer shall be placed under an official bond in a penal sum to be fixed by the Governor and Advisory Budget Commission at not less than fifty thousand dollars ($50,000). Such official bond shall be a bond with corporate surety and furnished by a company admitted to do business in the State, and the premiums will be paid by the State out of the appropriations to the Department of Administration. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1955, c. 578, s. 2; 1957, c. 269, s. 2; 1961, c. 1194; 1969, c. 844, s. 12.)

§ 143-4. Advisory Budget Commission. — The Chairman of the Appropriations and the Finance Committees of the House and of the Senate, two other Senators appointed by the President of the Senate, two other Representatives appointed by the Speaker of the House, and four other persons appointed by the Governor shall constitute the Advisory Budget Commission.

The members of the Advisory Budget Commission shall receive as full compensation for their services ten dollars ($10.00) per day for each day which they shall serve and their expenses. The Advisory Budget Commission shall be called in conference in January and July of each year, upon 10 days' notice by the Director of the Budget, and at such other times as in the opinion of the Director may be for the public interest.

A vacancy in a seat on the Commission filled by the chairman of a finance or an appropriations committee shall be filled by appointment by the officer who appointed the chairman causing the vacancy. A vacancy in one of the other seats on the Commission shall be filled by appointment by the officer who appointed the person causing the vacancy.

The Advisory Budget Commission alone shall be responsible for recommending to the General Assembly proposed biennial budgets for the requirements of the State Auditor and the State Treasurer, and for such purposes the Advisory Budget Commission shall require the State Auditor and State Treasurer to maintain records and to submit budget requests and periodic reports on their respective departments in the same manner and form as do other State agencies, and may further direct that such requests and reports be filed for safekeeping in the office of the Department of Administration.

Before the end of each fiscal year or as soon thereafter as practicable, the Advisory Budget Commission shall contract with a competent certified public accountant who is in no way otherwise affiliated with the State or with any agency thereof to conduct a thorough and complete audit of the receipts and expenditures of the State Auditor's office during the immediate fiscal year just ended, and to report to the Advisory Budget Commission on such audit not later than the following October first. A sufficient number of copies of such audit shall be provided so that at least one copy is filed with the Governor's Office, one copy with the Department of Administration and at least two copies filed with the Secretary of State.

In all matters where action on the part of the Advisory Budget Commission is required by this Article, eight members of the Commission shall constitute a quorum for performing the duties or acts required by the Commission. (1925, c. 89, s. 4; 1929, c. 100, s. 4; 1931, c. 295; 1951, c. 768; 1955, c. 578, s. 3; 1957, c. 269, s. 2; 1973, c. 820, ss. 1-3.)

§ 143-5. Appropriation rules. — All moneys heretofore and hereafter appropriated shall be deemed and held to be within the terms of this Article and subject to its provisions unless it shall be otherwise provided in the act appropriating the same; and no money shall be disbursed from the State treasury except as herein provided. (1925, c. 89, s. 5; 1929, c. 100, s. 5.)

Cited in O'Neal v. Wake County, 196 N.C. 184, 145 S.E. 28 (1928).

§ 143-6. Information from departments and agencies asking State aid. — On or before the first day of September biennially, in the even-numbered years, each of the departments, bureaus, divisions, officers, boards, commissions, institutions, and other State agencies and undertakings receiving or asking financial aid from the State, or receiving or collecting funds under the authority of any general law of the State, shall furnish the Director all the information, data and estimates which he may request with reference to past, present and future appropriations and expenditures, receipts, revenue, and income.

Any department, bureau, division, officer, board, commission, institution, or other State agency or undertaking desiring to request financial aid from the State for the purpose of constructing or renovating any State building, utility, or other property development (except a railroad, highway, or bridge structure) shall, before making any such request for State financial aid, submit to the Department of Administration a statement of its needs in terms of space and other physical requirements, and shall furnish the Department with such additional information as it may request. The Department of Administration shall then prepare preliminary studies and cost estimates for the use of the requesting department, bureau, division, officer, board, commission, institution, or other State agency or undertaking in presenting its request to the Director of the Budget. (1925, c. 89, s. 6; 1929, c. 100, s. 6; 1957, c. 584, s. 4; 1965, c. 310, s. 4.)

§ 143-7. Itemized statements and forms. — The statements and estimates required under G.S. 143-6 shall be itemized in accordance with the budget classification adopted by the Director, and upon forms prescribed by him, and shall be approved and certified by the respective heads or responsible officer of each department, bureau, board, commission, institution, or agency submitting same. Official estimate blanks which shall be used in making these reports shall be furnished by the Director of the Budget. (1925, c. 89, s. 7; 1929, c. 100, s. 7; 1957, c. 269, s. 2.)

§ 143-8. Statements of State Disbursing Officer as to legislative expenditures. — On or before the first day of September, biennially, in the even-numbered years, the State Disbursing Officer shall furnish the Director a detailed statement of expenditures of the General Assembly for the current fiscal biennium, and an estimate of its financial needs, itemized in accordance with the budget classification adopted by the Director and approved and certified by the President pro tempore of the Senate and the Speaker of the House for each year of the ensuing biennium, beginning with the first day of July thereafter; and a detailed statement of expenditures of the judiciary and any other institution or commission that may be requested by the Director for each year of the current fiscal biennium, and upon such request by the Director an estimate of its financial needs as provided by law, itemized in accordance with the budget classification adopted by the Director for each year of the ensuing biennium, beginning with the first day of July thereafter. The State Disbursing Officer shall transmit to the Director with these estimates an explanation of all increases or decreases. These estimates and accompanying explanations shall be included in the budget by the Director with such recommendations as the Director may desire to make in reference thereto. (1925, c. 89, s. 8; 1929, c. 100, s. 8; 1961, c. 1181, s. 1; 1971, c. 1200, s. 7.)

§ 143-9. Information to be furnished upon request. — The departments, bureaus, divisions, officers, commissions, institutions, or other State agencies or undertakings of the State, upon request, shall furnish the Director, in such form and at such time as he may direct, any information desired by him in relation to their respective activities or fiscal affairs. The State Auditor shall also furnish the Director any special, periodic, or other financial statements as the Director may request. (1925, c. 89, s. 10; 1929, c. 100, s. 9.)

§ 143-10. Preparation of budget and public hearing. — The members of the Commission shall, at the request of the Director, attend such public hearing and other meeting as may be held in the preparation of the budget. Said Commission shall act at all times in an advisory capacity to the Director on matters relating to the plan of proposed expenditures of the State government and the means of financing the same.

The Director, together with the Commission, shall provide for public hearings on any and all estimates to be included in the budget, which shall be held during the months of October and/or November and/or such other times as the Director may fix in the even-numbered years, and may require the attendance at these hearings of the heads or responsible representatives of all State departments, bureaus, divisions, officers, boards, commissions, institutions, or other State agencies or undertakings, and such other persons, corporations and associations, using or receiving or asking for any State funds. (1925, c. 89, s. 11; 1929, c. 100, s. 10.)

§ 143-11. Survey of departments. — On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend funds as hereinbefore defined, in the interest of economy and efficiency, and a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment and shall cause to be incorporated therein such statement of disagreement and the particulars thereof, as the Commission or any of its members shall deem proper to submit as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board, division, institution, commission, State agency or undertaking, person or corporation who receive or may receive for use and expenditure any State funds as hereinbefore defined, in accordance with the classification adopted by the Director, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each item of the proposed expenditures, the budget shall show in separate parallel columns the amount expended for the last preceding appropriation year, for the current appropriation year, and the increase or decrease. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital outlays.

The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.

(3) A statement of special funds.

(4) A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two appropriation years.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make, either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix. (1925, c. 89, s. 12; 1929, c. 100, s. 11.)

§ 143-11.1. Photographs to aid in determining needs of institutions requesting permanent improvements. — When the Advisory Budget Commission makes its biennial inspection of the facilities of the State and receives requests from the State institutions in the preparation of the report of the Advisory Budget Commission, the Director of the Budget may secure the services of a qualified photographer to accompany the Advisory Budget Commission on such tour of inspection and to take such photographs as the members of the Advisory Budget Commission may deem advisable in order to assist the Advisory Budget Commission and the members of the General Assembly in obtaining a clear conception of the needs of the various institutions requesting permanent improvements. The Director of the Budget may furnish sufficient copies of such photographs to the General Assembly at the time it is considering requests for appropriations from such institutions to enable each member of the General Assembly to have ready access to such photographs.

For the purpose of securing the service provided in this section, the Director of the Budget is authorized to obtain the services of any regular photographer in the employment of the State and if no such photographer is available the Director of the Budget may secure the services of a professional photographer and the expense of such service shall be borne from the regular funds of the Department of Administration, and if necessary, additional funds may be secured from the Contingency and Emergency Fund. (1953, c. 982; 1957, c. 269, ss. 1, 2.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" near the end of the section. See § 143-344(a).

§ 143-12. Bills containing proposed appropriations. — The Director, by and with the advice of the Commission, shall cause to be prepared and submitted to the General Assembly the following bills:

(1) A bill containing all proposed appropriations of the budget for each year in the ensuing biennium, which shall be known as the "Budget Appropriation Bill."

(2) A bill containing the views of the Director of the Budget with respect to revenue for the ensuing biennium, which shall be known as the "Budget Revenue Bill," which will in the opinion of the Director and the Commission provide an amount of revenue for the ensuing biennium, sufficient to meet the appropriations contained in the Budget Appropriation Bill.

(3) A bill containing proposed methods and machinery for the collection of taxes and the listing of property for taxation, in the several counties of the State, and municipalities, which shall be known as the "Budget Machinery Bill," and such bill shall contain the judgment and the result of all the latest, most improved methods of listing and collection of taxes, for counties and municipalities, according to the best information

obtainable by the Commission and the Director, with a view to the ease and simplification of the methods of the listing of property for such taxation and for the collection of the same, having in view the necessity of counties and municipalities to collect the highest percentage possible of taxes levied at the minimum cost.

To the end that all expenses of the State may be brought and kept within the budget, the Budget Appropriation Bill shall contain a specific sum as a contingent or emergency appropriation. The manner of the allocation of such contingent or emergency appropriation shall be as follows: Any institution, department, commission, or other agency or activity of the State, or other activity in which the State is interested, desiring an allotment out of such contingent or emergency appropriation, shall upon forms prescribed and furnished by the Director of the Budget, present such request in writing to the Director of the Budget, with such information as he may require, and if the Director of the Budget shall approve such request, in whole or in part, he shall forthwith present the same to the Governor and Council of State, and upon their order only shall such allotment be made. If the Director shall disapprove the request of such an allotment out of the emergency or contingent appropriation, he shall transmit his refusal and his reason therefor to the Governor and Council of State for their information.

If the Director and the Commission shall not agree as to the Appropriation, Revenue and Machinery Bills in substantial particulars, the Director shall prepare the same, based on his conclusions and judgment, and shall cause to be submitted therewith such statements of disagreement, and the particulars thereof, as the Commission, or any of its members, shall find proper to submit as representing their own views. (1925, c. 89, s. 13; 1929, c. 100, ss. 12, 13, 14; 1957, c. 269, s. 2.)

§ 143-13. Printing copies of budget report and bills and rules for the introduction of the same. — The Director shall cause to be printed one thousand copies each of the budget report, the Budget Appropriation Bill, the Budget Revenue Bill, and the Budget Machinery Bill. The Governor shall present copies thereof to the General Assembly, together with the biennial message, except incoming Governors may, at the first session of the General Assembly in their respective terms, submit the same after the biennial message has been presented to the General Assembly. The Budget Appropriation Bill shall be introduced by the chairman of the committee on appropriations in each house of the General Assembly, and the Budget Revenue Bill and the Budget Machinery Bill shall be introduced by the chairmen of the finance committees in each branch of the General Assembly: Provided, that for the years in which the Governor is elected, the Director shall deliver the budget report and the Budget Appropriation Bill and the Budget Revenue Bill and the Budget Machinery Bill to the Governor-elect, on or before the fifteenth day of December, and the said budget report, Appropriation, Revenue and Machinery Bills, shall be presented by the Governor to the General Assembly with such recommendations in the way of amendments, or other modifications, together with such criticism as he may determine. The provisions herein contained as to the introduction of the bills mentioned in this section shall be considered and treated as a rule of procedure in the Senate and House of Representatives until otherwise expressly provided for by a rule in either, or both, of said branches of the General Assembly. (1925, c. 89, s. 14; 1929, c. 100, s. 15.)

§ 143-14. Joint meetings of committees considering the budget report and appropriation bill. — The appropriations committees of the House of Representatives and the Senate and subcommittees thereof shall sit jointly in open sessions while considering the budget and such consideration shall embrace the entire budget plan, including appropriations for all purposes, revenue, borrowings and other means of financing expenditures. Such joint meetings shall begin within five days after the budget has been presented to the General Assembly by the Governor. This joint committee shall have power to examine under oath any officer or head of any department or any clerk or employee thereof; and to compel the production of papers, books of account, and other documents in the possession or under the control of such officer or head of department. This joint committee may also cause the attendance of heads or responsible representatives of a department, institution, division, board, commission, and agency of the State, to furnish such information and answer such questions as the joint committee shall require. To these sessions of the joint committee or subcommittees shall be admitted, with the right to be heard, all taxpayers or other persons interested in the estimates under consideration. The Director or a designated representative shall have the right to sit at these public hearings and to be heard on all matters coming before the joint committee or subcommittees thereof. The said joint committee or any subcommittee thereof shall have full power and authority to punish for disobedience of its writs or orders requiring persons to attend such hearings and to answer under oath such questions as may be put to them by such committee or anyone acting in its behalf; such punishment shall be as is now, or may hereafter be prescribed for direct contempt, but with the right of such offender to appeal from the judgment of such committee to the Superior Court of Wake County, upon the giving of such bond as may be required by such committee. In so far as this section prescribes the method and manner of hearings before such committees this section shall be considered and have the force of a rule of each branch of the General Assembly until and unless a change has been made by an express rule of such branch thereof. (1925, c. 89, s. 15; 1929, c. 100, s. 16; 1953, c. 501; 1955, c. 5.)

§ 143-15. Reduction and increase of items by General Assembly. — The provisions of this Article shall continue to be the legislative policy with reference to the making of appropriations and shall be treated as rules of both branches of the General Assembly until and unless the same may be changed by the General Assembly either by express enactment or by rules adopted by either branch of the General Assembly.

The General Assembly may reduce or strike out such item in the Budget Appropriation Bill as it may deem to be the interest of the public service, but neither House shall consider further or special appropriations until the Budget Appropriation Bill shall have been enacted in whole or in part or rejected, unless the Governor shall submit and recommend an emergency appropriation bill or emergency appropriation bills, which may be amended in the manner set out herein, and such emergency appropriation bill, or bills, when enacted, shall continue in force only until the Budget Appropriation Bill shall become effective, unless otherwise provided by the General Assembly.

The General Assembly may also increase any appropriation set out in the Budget Appropriation Bill and may provide additional appropriations for other purposes if additional revenue or revenues, equal to the amount of such additional appropriations and increases, are provided for by corresponding amendment to the Budget Revenue Bill. No bill carrying an appropriation shall thereafter be enacted by the General Assembly, unless it be for a single object therein described and shall provide an adequate source of revenue for defraying such appropriation, or unless it appears from the budget report or the Budget Revenue Bill that there is sufficient revenue available therefor. The appropriation, or appropriations, in such bills shall be in accordance with the classification used in the budget. (1925, c. 89, s. 16; 1929, c. 100, s. 17.)

§ 143-16. Article governs all departmental, agency, etc., appropriations. —Every State department, bureau, division, officer, board, commission, institution, State agency, or undertaking, shall operate under an appropriation made in accordance with the provisions of this Article; and no State department, bureau, division, officer, board, commission, institution, or other State agency or undertaking shall expend any money, except in pursuance of such appropriation and the rules, requirements and regulations made pursuant to this Article. (1925, c. 89, s. 17; 1929, c. 100, s. 18.)

Art Museum Building Commission. — There is nothing in the Executive Budget Act or § 143B-58 which indicates a legislative intent to exempt the Art Museum Building Commission from the requirements of the Executive Budget Act. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-17. Requisition for allotment. — Before an appropriation of any spending agency shall become available, such agency shall submit to the Director, not less than 20 days before the beginning of each quarter of each fiscal year a requisition for an allotment of the amount estimated to be required to carry on the work of the agency during the ensuing quarter and such requisition shall contain such details of proposed expenditures as may be required by the Director. The Director shall approve such allotments, or modifications of them, as he may deem necessary to make, and he shall submit the same to the State Auditor who in the course of his audits shall check for compliance with such allotments. No allotment shall be changed nor shall transfers be made except upon the written request of the responsible head of the spending agency and by approval of the Director of the Budget in writing: Provided, that quarterly allotments made to the Auditor's office and the Treasurer's office shall be in such amounts as may be designated by the Advisory Budget Commission, and shall be made available in accordance with procedures determined by the Advisory Budget Commission. (1925, c. 89, s. 18; 1929, c. 100, s. 19; 1955, c. 578, s. 4.)

§ 143-18. Unencumbered balances to revert to treasury; capital appropriations excepted. — All unencumbered balances of maintenance appropriations shall revert to the State treasury to the credit of the general fund or special funds from which the appropriation and/or appropriations, were made and/or expended, at the end of the biennial fiscal period; except that capital expenditures for the purchase of land or the erection of buildings or new construction shall continue in force until the attainment of the object or the completion of the work for which such appropriations are made. (1925, c. 18, s. 19; 1929, c. 100, s. 20.)

§ 143-18.1. Increase or decrease of projects within capital improvement appropriations; requesting authorization of capital projects not specifically provided for. — The Director of the Budget and the Advisory Budget Commission may, upon the request of the administration of a State agency or institution when, in their opinion, it is in the best interest of the State to do so, increase or decrease the costs and scope of a capital improvement project within the appropriation made to that State agency or institution within the capital improvement appropriation to that agency or institution for that biennium.

The Director of the Budget and the Advisory Budget Commission may when, in their opinion, it is in the best interest of the State to do so and upon the request of the administration of any State agency or institution authorize the construction of a capital improvement project not specifically provided for or authorized by the General Assembly when funds become available by gifts or grants. All expenditures under this authorization shall be handled in full compliance with the provisions of the Executive Budget Act.

The agency shall support its request for such capital improvement project, or projects, with the following information: the estimated annual operating costs for (i) utilities; (ii) maintenance; (iii) repairs; (iv) additional personnel; (v) any and all other expenses to the State resulting from the addition of this facility to the plant of the institution. (1965, c. 841, s. 1.)

§ 143-19. Help for Director. — The Director is hereby authorized to secure such special help, expert accountants, draftsmen and clerical help as he may deem necessary to carry out his duties under this Article; and shall fix the compensation of all persons employed under this Article; which shall be paid by the State Treasurer upon the warrant of the State Disbursing Officer. A statement in detail of all persons employed, time employed, compensation paid, and itemized statement of all other expenditures made under the terms of this Article, shall be reported to the General Assembly by the Director, and all payments made under this Article shall be charged against and paid out of the emergency contingent fund and/or such appropriations as may be made for the use of the Department of Administration. (1925, c. 89, s. 20; 1929, c. 100, s. 21; 1957, c. 269, s. 2; 1961, c. 1181, s. 2.)

§ 143-20. Accounting records and audits. — The Director shall be responsible for keeping a record of the appropriations, allotments, expenditures, and revenues of each State department, institution, board, commission, officer, or other agency in any manner handling State funds. These records shall be kept in summary form, or in as much detail as the Director may deem advisable. Audits of the records of the State Auditor and the State Treasurer for the periods preceding the transfer of preaudit and related functions from the Auditor's office to the Director of the Budget may be accomplished by the Department of Administration at the direction of the Director of the Budget. (1925, c. 89, s. 22; 1929, c. 100, s. 22; 1955, c. 578, s. 5; 1957, c. 269, s. 2.)

§ 143-21. Issuance of subpoenas. — The Director shall have and is hereby given full power and authority to issue the writ of subpoena for any and all persons who may be desired as witnesses concerning any matters being inquired into by the Director or the Commission, and such writs when signed by the Director shall run anywhere in this State and be served by any civil process officer without fees or compensation. Any failure to serve writs promptly and with due diligence, shall subject such officer to the usual penalties and liabilities and punishment as are now provided in the cases of like kind applying to sheriffs, and any persons who shall fail to obey said writ shall be subject to punishment for contempt in the discretion of the court and to be fined as witnesses summoned to attend the superior court, and such remedies shall be enforced against such offending witnesses upon motion and notice filed in the Superior Court of Wake County by the Attorney General under the direction of the Director. Any and all persons who shall be subpoenaed and required to appear before the Director or the Commission as witnesses concerning any matters being inquired into shall be compellable and required to testify, but such persons shall be immune from prosecution and shall be forever pardoned for violation of law about which such person is so required to testify. (1925, c. 89, s. 25; 1929, c. 100, s. 23; 1953, c. 675, s. 18.)

§ 143-22. Surveys, studies and examinations of departments and institutions. — The Director is hereby given full power and authority to make such surveys, studies, examinations of departments, institutions and agencies of this State, as well as its problems, so as to determine whether there may be an overlapping in the performance of the duties of the several departments and institutions and agencies of the State, and to make surveys, examinations and inquiries into the matter of the various activities of the State, and to survey, appraise, examine and inspect and determine the true condition of all property of the State, and what may be necessary to protect it against fire hazard, deterioration, and to conserve its use for State purposes, and to make and issue and to enforce all necessary, needful or convenient rules and regulations for the enforcement of this Article. (1925, c. 89, s. 26; 1929, c. 100, s. 23; 1969, c. 458, s. 2.)

§ 143-23. All maintenance funds for itemized purposes; transfers between objects and items. — All appropriations now or hereafter made for the maintenance of the various departments, institutions and other spending agencies of the State, are for the purposes and/or objects enumerated in the itemized requirements of such departments, institutions and other spending agencies submitted to the General Assembly by the Director of the Budget and the Advisory Budget Commission, and/or as amended by the General Assembly. Transfers or changes as between objects and items in the budget of any department, institution or other spending agency, may be made at the request in writing of the head of such department, institution or other spending agency by the Director of the Budget. (1929, c. 100, s. 24.)

Transfer of Funds within School Appropriations for Transportation Lawful. —See opinion of Attorney General to Mr. Thomas J. White, Chairman, Advisory Budget Commission, 40 N.C.A.G. 286 (1970).

Cited in Styers v. Phillips, 277 N.C. 460, 178 S.E.2d 583 (1971).

§ 143-23.1. Maintenance funds for the State Auditor and State Treasurer. — All appropriations now or hereafter made for the support of the functions and responsibilities of the State Auditor and the State Treasurer are for the purposes and objects enumerated in the itemized requirements of such activities recommended to the General Assembly by the Advisory Budget Commission, and/or as amended by the General Assembly. Transfers or changes as between objects and items in the budgets of the State Auditor and the State Treasurer may be authorized by the Advisory Budget Commission in accordance with procedures established by the Commission. (1955, c. 578, s. 6.)

§ 143-24. Borrowing of money by State Treasurer. — The Director of the Budget, by and with the consent of the Governor and Council of State, shall have authority to authorize and direct the State Treasurer to borrow in the name of the State, in anticipation of the collection of taxes, such sum or sums as may be necessary to make the payments on the appropriations as even as possible and to preserve the best interest of the State in the conduct of the various State institutions, departments, bureaus, and agencies during each fiscal year. (1929, c. 100, s. 25.)

§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them. — All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. The Director of the Budget is hereby given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and by and with the advice and consent of a majority of the Advisory Budget Commission to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, he shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget, by and with the advice and consent of a majority of the Advisory Budget Commission, may reduce all of said appropriations pro rata, including appropriations for the State Auditor and the State Treasurer, when necessary to prevent an overdraft or deficit for the fiscal period for which such appropriations are made. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. (1929, c. 100, s. 26; 1955, c. 578, s. 7; 1973, c. 476, s. 193.)

§ 143-26. Director to have discretion as to manner of paying annual appropriations. — Unless otherwise provided, it shall be discretionary with the Director of the Budget whether any annual appropriation shall be paid in monthly, quarterly or semiannual installments or in a single payment. (1897, c. 368; Rev., s. 5372; C. S., s. 7683; 1925, c. 275, s. 9; 1929, c. 100, s. 27.)

§ 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them. — All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them, are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs of maintenance of such institutions, departments, and agencies. (1929, c. 100, s. 28.)

§ 143-27.1. Allocation of funds appropriated for area vocational training schools. — Funds appropriated to the Budget Bureau for area vocational training schools shall be allocated and disbursed for training programs under terms and conditions as may be prescribed by the Director of the Budget upon approval of the Advisory Budget Commission. (1957, c. 1385.)

Cross Reference. — For provision that a statutory reference to the "Budget Bureau" shall be deemed to refer to the Department of Administration, see § 143-344.

§ 143-28. All State agencies under provisions of this Article. — It is the intent and purpose of this Article that every department, institution, bureau, division, board, commission, State agency, person, corporation, or undertaking, by whatsoever name now or hereafter called, that expends money appropriated by the General Assembly or money collected by or for such departments, institutions, bureaus, boards, commissions, persons, corporations, or agencies, under any general law of this State, shall be subject to and under the control of every provision of this Article. Any power expressed in this Article or necessarily implied from the language hereof or from the nature and character of the duties imposed, in addition to the powers and duties heretofore expressly conferred herein, shall be held and construed to be given hereby to the end that any and all duties herein imposed and made and all purposes herein expressed may be fully performed and completely accomplished, and to that end this Article shall be liberally construed. Provided, that notwithstanding the general language in this Article the expenditure of funds by or under the supervision and control of the State Auditor and the State Treasurer for their respective departments shall not, except as provided in G.S. 143-25, be subject to the powers of the Director of the Budget or the Department of Administration, it being intended that the State Auditor and the State Treasurer shall be independent of any fiscal control exercised by the Director of the Budget, and shall be subject only to such control as may be exercised by the Advisory Budget Commission. (1925, c. 89, s. 28; 1929, c. 100, s. 29; 1955, c. 578, s. 8; 1957, c. 269, s. 2.)

Quoted in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-29. Delegation of power by Director. — Any power or duty herein conferred on the Governor as Director may be exercised and performed by such person or persons as may be designated or appointed by him from time to time in writing. (1925, c. 89, s. 29; 1929, c. 100, s. 30.)

§ 143-30. Budget of State institutions. — The several institutions of the State, boards, departments, commissions, agencies, persons or corporations, included with the terms hereof to which appropriations are made now or hereafter for permanent improvements or for maintenance, shall, before any of such appropriations, whether for permanent improvements or for maintenance, are available or paid to them or any one of them, budget their requirements and present the same to the Director of the Budget on or before the first day of June of each odd-numbered year hereafter. There shall be a separate budget presented for permanent improvements and for maintenance. Each of said budgets shall contain the requirements of said institutions, boards, commissions, and agencies, persons and corporations, and undertakings, as hereinbefore defined, for the succeeding two years. Each institution, board, department, commission, agency, person or corporation, in the preparation of such budget, shall follow as nearly as may be the itemized recommendations of the Director of the Budget and Advisory Budget Commission and/or as amended by the General Assembly. The forms, except when modified and changed by authority of the Director of the Budget, shall be the forms used in presenting the requests. (1925, c. 230, s. 2; 1929, c. 100, s. 32.)

Purpose of these statutory provisions is to guard against improvident, extravagant or unauthorized expenditure of State funds in the construction of a building by any commission or agency of the State. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-31. Building and permanent improvement funds spent in accordance with budget. — All buildings and other permanent improvements, which shall be erected and/or constructed, and carried on and the money spent therefor in strict accordance with the budget requests of such institution, board, commission, agency, person, or corporation filed with the Director of the Budget. The expenditure of appropriations for maintenance shall be in strict accordance with the budget recommendations for such institution, board, commission, agency, person or corporation and/or as amended or changed by the General Assembly. It shall be the duty of the Director of the Budget to see that all money appropriated for either permanent improvements or maintenance shall be expended in strict accordance with the budget recommendations and/or as amended by the General Assembly, for each department, institution, board, commission, agency, person or corporation. If the Director of the Budget shall ascertain that any department, institution, board, commission, agency, person or corporation has used any of the moneys appropriated to it for any purpose other than that for which it was appropriated and budgeted, as herein required, and not in strict accordance with the terms of this Article, the Director of the Budget shall have the power and he is hereby authorized to notify such institution, board, commission, agency, person or corporation that no further sums from any appropriation made to it will be available to such department, institution, board, commission, agency, person or corporation until and after the persons responsible for the diversion of the said funds shall have replaced the same, and the Director of the Budget shall have the power and he is hereby authorized to notify the State Disbursing Officer not to approve or issue any further warrants for such department, institution, board, commission, agency, person or corporation for any unexpended appropriation and the State Disbursing Officer is hereby prohibited from approving or issuing any further warrants for such department, institution, board, commission, agency, person or corporation until he shall have been otherwise directed by the Director of the Budget. (1925, c. 230, s. 3; 1929, c. 100, s. 33; 1961, c. 1181, s. 3.)

Purpose of these statutory provisions is to guard against improvident, extravagant or unauthorized expenditure of State funds in the construction of a building by any commission or agency of the State. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-31.1. Study and review of plans and specifications for building, improvement, etc., projects. — It shall be the duty and responsibility of the Director of the Budget to determine whether buildings, repairs, alterations, additions or improvements to physical properties for which appropriations of State funds are made have been designed for the specific purpose for which such appropriations are made, that such projects have been designed giving proper consideration to economy in first cost, in maintenance cost, in materials and type of construction. Architectural features shall be selected which give proper consideration to economy in design. The Director of the Budget shall have prepared a complete study and review of all plans and specifications for such projects and bids on same will not be received until the results of such study and review have been incorporated in such plans and specifications, and until economic conditions of the construction industry are considered by the Department of Administration to be favorable to the letting of construction contracts. (1953, c. 1090; 1963, c. 423; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment deleted "the Division of Property Control of" preceding "the Department of Administration" in the last sentence.

Cited in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-31.2. Appropriation, allotment, and expenditure of funds for historic and archeological property. — No funds of the State of North Carolina shall be appropriated, allotted, or expended for the acquisition, preservation, restoration, or operation of historic or archeological real and personal property, and the Director of the Budget shall not allot any appropriations for a particular historic site until (i) the property or properties shall have been approved for such purpose by the Department of Cultural Resources according to criteria adopted by the North Carolina Historical Commission, (ii) the report and recommendation of the North Carolina Historical Commission has been received and considered by the Department of Cultural Resources, and (iii) the Department of Cultural Resources has found that there is a feasible and practical method of providing funds for the acquisition, restoration and/or operation of such property. (1963, c. 210, s. 3; 1973, c. 476, s. 48.)

Cited in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-32. Person expending an appropriation wrongfully. — (a) Any trustee, director, manager, building committee or other officer or person connected with any institution, or other State agency as herein defined, to which an appropriation is made, who shall expend any appropriation for any purpose other than that for which the money was appropriated and budgeted or who shall consent thereto, shall be liable to the State of North Carolina for such sum so spent and the sum so spent, together with interest and costs, shall be recoverable in an action to be instituted by the Attorney General for the use the of State of North Carolina, which action may be instituted in the Superior Court of Wake County, or any other county, subject to the power of the court to remove such action for trial to any other county, as provided in G.S. 1-83, subdivision (2).

(b) Any member or members of any board of trustees, board of directors, or other controlling body governing any of the institutions of the State, or any officer, employee of, or person holding any position with any of the institutions of the State, or other State agency as herein defined, who willfully acts to divert, use, or expend any funds appropriated for the use of said institution or agency, in a manner designed to circumvent the provisions of this section, including normal reversions of State funds, by failing to properly receive or deposit funds, or by the improper expenditure or transfer of funds for any purpose other than that for which the funds were appropriated and budgeted, shall be guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. All offenses against this section shall be held to have been committed in the County of Wake and shall be tried and disposed of in the General Court of Justice for Wake County. If such offender be not an officer elected by vote of the people, conviction of such offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon 30 days' notice in writing to such offender. (1925, c. 230, s. 4; 1929, c. 100, s. 34; 1977, c. 930.)

Editor's Note. — The 1977 amendment designated the former provisions of this section as subsection (a) and added subsection (b). The editors have substituted "this section" for "this act" in the first sentence of subsection (b) of the section as set out above.

§ **143-33. Intent.** — It is an intent and purpose of this Article that all departments, institutions, boards, commissions, agencies, persons or corporations to which appropriations for permanent improvements and/or maintenance are made, shall submit to the Director of the Budget their requests for the payment of such appropriations in the form of a budget, following the recommendations made by the Director of the Budget and the Advisory Budget Commission and/ or as amended by the General Assembly. (1925, c. 230, s. 5; 1929, c. 100, s. 35.)

§ 143-34. Penalties and punishment for violations. — A refusal to perform any of the requirements of this Article, and the refusal to perform any rule or requirement or request of the Director of the Budget made pursuant to, or under authority of, the Executive Budget Act, shall subject the offender to penalty of two hundred and fifty dollars ($250.00), to be recovered in an action instituted either in Wake County Superior Court, or any other county, by the Attorney General for the use of the State of North Carolina, and shall also constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court. If such offender be not an officer elected by vote of the people, such offense shall be sufficient cause for removal from office or dismissal from employment by the Governor upon 30 days' notice in writing to such offender. (1929, c. 100, s. 36.)

§ 143-34.1. Payrolls submitted to the Director of the Budget; approval of payment of vouchers. — All payrolls of all departments, institutions, and agencies of the State government shall, prior to the issuance of vouchers in payment therefor, be submitted to the Director of the Budget, who shall check the same against the appropriations to such departments, institutions and agencies for such purposes, and if found to be within said appropriations, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the State Disbursing Officer, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the Director of the Budget. (1949, c. 718, s. 5; 1957, c. 269, s. 2; 1961, c. 1181, s. 4.)

§ 143-34.2. Information as to requests for nonstate funds for projects imposing obligation on State; statement of participation in contracts, etc., for nonstate funds. — All State agencies, funds, or state-supported institutions shall submit to the Department of Administration, as of the original date thereof, copies of all applications and requests for nonstate funds, (including federal funds), to be used for any purpose to which this section is applicable. This section shall be applicable to all projects and programs which do or may impose upon the State of North Carolina any substantial financial obligation at the time of or subsequent to the acceptance of any funds received upon any such application or request. Every State agency, fund or state-supported institution seeking nonstate funds for any such project or program shall furnish to the Department of Administration and the Advisory Budget Commission with each such copy of application or request, a statement of the purposes for which any such project or program is desired or advocated, the source and amount of funds to be granted or provided therefor, and a statement of the conditions, if any, upon which such funds are to be provided.

It shall be required of all State agencies, funds, or state-supported institutions, commissions or regional planning and development bodies to submit to the Department of Administration a statement of participation in any contract, agreement, plan or request for nonstate funds (including federal funds).

Any contract entered into by a State agency, department, or institution for a federal grant shall include a limiting clause which specifically states that continuation of the grant program by the State of North Carolina is subject to State funds being appropriated by the General Assembly for that program. (1965, c. 1181; 1969, c. 1210; 1977, c. 802, s. 15.25.)

Editor's Note. — The 1977 amendment added the third paragraph.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 143-34.3: Repealed by Session Laws 1977, c. 802, s. 15.20.

§ 143-34.4. Legislative fiscal research staff participation. — Legislative fiscal research staff members may attend all meetings of the Advisory Budget Commission and all hearings conducted by or for the Commission, and may accompany the Commission to inspect the facilities of the State. The Legislative Services Officer shall be notified of all such meetings, hearings and trips in the same manner and at the same time as notice is given to members of the Commission. The Legislative Services Officer shall be provided with a copy of all reports, memoranda, and other informational material which are distributed to the members of the Commission; these reports, memoranda and materials shall be delivered to the Legislative Services Officer at the same time that they are distributed to the members of the Commission. (1971, c. 659, s. 2.)

§ 143-34.5. Budget transfers. — Every State department, institution, and agency shall provide to the chairman of the legislative commission on governmental operations a copy of every approved budget transfer which permits the expenditure of funds for a purpose for which the General Assembly made no appropriation. (1975, 2nd Sess., c. 983, s. 124.)

§§ 143-34.6 to 143-34.9: Reserved for future codification purposes.

ARTICLE 1.1.

Periodic Review of Certain State Agencies.

§ 143-34.10. Findings and purposes. — The General Assembly finds that State government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The General Assembly further finds that by establishing a system for the termination, continuation, and reestablishment of such agencies, it will be in better position to evaluate the need for the continued existence of existing and future regulatory bodies. (1977, c. 712, s. 1.)

Editor's Note. — Session Laws 1977, c. 712, s. 13, contains a severability clause.

§ 143-34.11. Certain General Statutes provisions repealed effective July 1, 1979. — The following statutes are repealed effective July 1, 1979, (except for purposes of the winding-up period, as provided by section 5 of this act):

Chapter 83, entitled "Architects."
Chapter 89C, entitled "Engineering and Land Surveying."
Chapter 89A, entitled "Landscape Architects."
Chapter 87, Article 1, entitled "General Contractors."
Chapter 87, Article 2, entitled "Plumbing and Heating Contractors."
Chapter 87, Article 3, entitled "Tile Contractors."
Chapter 87, Article 4, entitled "Electrical Contractors."
Chapter 87, Article 5, entitled "Refrigeration Contractors."
Chapter 87, Article 6, entitled "Water Well Contractors."
Chapter 84, Article 4, entitled "North Carolina State Bar."
Chapter 85C, entitled "Bail Bondsmen and Runners."
Chapter 90A, Article 1, entitled "Sanitarians."
Chapter 90A, Article 2, entitled "Water Treatment Facility Operators."
Chapter 90A, Article 3, entitled "Wastewater Treatment Plant Operators."
Chapter 93, entitled "Public Accountants."
Chapter 93A, entitled "Real Estate Brokers and Salesmen."
Chapter 66, Article 9A, entitled "Private Detectives."
Chapter 93C, entitled "Watchmakers."
Chapter 74, Article 6, entitled "Mining Registration."
Chapter 78A, Article 5, entitled "Registration of Dealers and Salesmen" (of securities).
Chapter 81A, Article 5, entitled "Public Weightmasters."
Chapter 95, Article 5, entitled "Regulation of Employment Agencies."
Chapter 95, Article 15, entitled "Passenger Tramways."
Chapter 143B, Article 2, Part 6, entitled "Public Librarian Certification Commission," G.S. 125-9, entitled "Librarian Certification" and G.S. 125-10, entitled "Temporary Certificates for Public Librarians."
Chapter 74, Article 7, entitled "The Mining Act of 1971."
Chapter 113A, Article 4, entitled "Sedimentation Pollution Control Act of 1973."
Chapter 143, Article 21, Part 3, entitled "Dam Safety."
Chapter 143B, Article 7, Part 6, entitled "North Carolina Mining Commission."
Chapter 143B, Article 7, Part 8, entitled "Sedimentation Control Commission."
Chapter 143B, Article 7, Part 9, entitled "Wastewater Treatment Plant Operators Certification Commission."

G.S. 76-1 through 76-12, relating to a board of commissioners of navigation and pilotage for the Cape Fear River and Bar.
Chapter 76, Article 6, entitled "Morehead City Navigation and Pilotage Commission."
Chapter 71, Article 2, entitled "North Carolina Commission on Indian Affairs." (1977, c. 712, s. 2.)

§ 143-34.12. Certain General Statutes provisions repealed effective July 1, 1981. — The following statutes are repealed effective July 1, 1981, (except for purposes of the winding-up period, as provided by section 5 of this act):
Chapter 90, Article 1, entitled "Practice of Medicine."
Chapter 90, Article 2, entitled "Dentistry."
Chapter 90, Article 4, entitled "Pharmacy."
Chapter 90, Article 6, entitled "Optometry."
Chapter 90, Article 7, entitled "Osteopathy."
Chapter 90, Article 8, entitled "Chiropractic."
Chapter 90, Article 9, entitled "Nurse Practice Act."
Chapter 90, Article 10, entitled "Midwives," and Chapter 130, Article 18, entitled "Midwives."
Chapter 90, Article 11, entitled "Veterinarians."
Chapter 90, Article 12A, entitled "Podiatrists."
Chapter 90, Article 13A, entitled "Practice of Funeral Service."
Chapter 90, Article 16, entitled "Dental Hygiene Act."
Chapter 90, Article 17, entitled "Dispensing Opticians."
Chapter 90, Article 18, entitled "Physical Therapy."
Chapter 90, Article 18A, entitled "Practicing Psychologists."
Chapter 90, Article 20, entitled "Nursing Home Administration Act."
Chapter 86, entitled "Barbers."
Chapter 88, entitled "Cosmetic Art."
Chapter 108, Article 3, Part 2, entitled "Licensing of Private Institutions (maternity homes, homes for the aged and infirm, private child-care institutions)."
Chapter 110, Article 3, entitled "Control over Child-Caring Facilities," and Article 7, entitled "Day-Care Facilities."
Chapter 143B, Article 9, Part 4, entitled "Child Day-Care Licensing Commission."
Chapter 122, Article 2E, entitled "Licensing of Local Mental Health Facilities."
G.S. 122-72, entitled "Licensing and Control of Local Mental Institutions and Homes."
Chapter 130, Article 26, entitled "Regulation of Ambulance Services."
Chapter 131, Article 13A, entitled "Hospital Licensing Act."
Chapter 66, Article 9, entitled "Collection of Accounts."
Chapter 66, Article 9B, entitled "Motor Clubs and Associations."
Chapter 113A, Article 7, entitled "Coastal Area Management."
Chapter 143, Article 21, entitled "Water and Air Resources," (except Part 3).
Chapter 143, Article 21A, entitled "Oil Pollution Control."
Chapter 143, Article 21B, entitled "Air Pollution Control."
Chapter 143, Article 38, entitled "Water Resources."
Chapter 143B, Article 7, Part 4, entitled "Environmental Management Commission." (1977, c. 712, s. 3.)

§ 143-34.13. Certain General Statutes provisions repealed effective July 1, 1983. — The following statutes are repealed effective July 1, 1983, (except for purposes of the winding-up period, as provided by section 5 of this act):
Chapter 90, Article 22, entitled "Licensure Act for Speech and Language Pathologists and Audiologists."

Chapter 89B, entitled "Foresters."
Chapter 85B, entitled "Auctions and Auctioneers."
Chapter 74B, entitled "Private Protective Services Act."
Chapter 89D, entitled "Landscape Contractors."
Chapter 136, Article 2C, entitled "House Movers Licensing Board."
Chapter 93D, entitled "North Carolina State Hearing Aid Dealers and Fitters Board."
Chapter 104E, entitled "North Carolina Radiation Protection Act."
Chapter 106, Article 2, entitled "North Carolina Fertilizer Law of 1947."
Chapter 106, Article 4C, entitled "Structural Pest Control Act."
Chapter 106, Article 5A, entitled "Marketing of Farmers Stock Peanuts."
Chapter 106, Article 12, entitled "Food, Drugs and Cosmetics."
Chapter 106, Article 14, entitled "State Inspection of Slaughterhouses."
Chapter 106, Article 14A, entitled "Licensing and Regulation of Rendering Plants and Rendering Operations."
Chapter 106, Article 15A, entitled "Meat Grading Law."
Chapter 106, Article 17, entitled "Marketing and Branding Farm Products."
Chapter 106, Article 28A, entitled "Regulation of Milk Brought into North Carolina from other States," and Article 28B, entitled "Regulation of Production, Distribution, etc., of Milk and Cream."
Chapter 106, Article 29, entitled "Inspection, Grading, and Testing Milk and Dairy Products."
Chapter 106, Article 31, entitled "North Carolina Seed Law."
Chapter 106, Article 34, Part 10, entitled "Feeding Garbage to Swine."
Chapter 106, Article 35, entitled "Public Livestock Markets."
Chapter 106, Article 35B, entitled "Livestock Dealer Licensing Act."
Chapter 106, Article 44, entitled "Unfair Practices by Handlers of Fruits and Vegetables."
Chapter 106, Article 49, entitled "Poultry; Hatcheries; Chick Dealers."
Chapter 106, Article 51A, entitled "North Carolina Antifreeze Law of 1975."
Chapter 106, Article 53, entitled "Grain Dealers," and Article 54, entitled "Adulteration of Grains."
Chapter 113, Article 7, entitled "North Carolina Game Law of 1935."
Chapter 113, Article 17, entitled "Administrative Provisions; Regulatory Authority of Marine Fisheries Commission and Department."
Chapter 143, Article 52, Part 3, entitled "Pesticide Dealers and Manufacturers."
Chapter 143, Article 52, Part 4, entitled "Pesticide Applicators and Consultants."
G.S. 58-15, entitled "Authority over all insurance companies; no exemptions from license."
G.S. 58-40, entitled "Agents and others must procure license."
Chapter 58, Article 4, entitled "Insurance Premium Financing." (1977, c. 712, s. 4.)

§ 143-34.14. Winding-up period. — Upon termination, each program or function shall continue in operational existence until July 1 of the next succeeding year as a winding-up period. During the winding-up period, termination shall not reduce or otherwise limit the powers or authority of the responsible agencies. Upon the expiration of the one-year period after termination, each such program or function shall cease operation entirely. (1977, c. 712, s. 5.)

§ 143-34.15. Governmental Evaluation Commission; creation; membership, compensation, etc.; termination. — (a) There is hereby created a temporary State commission, to be known as the Governmental Evaluation

Commission, (hereinafter, "the Commission") which shall consist of 10 members, six to be appointed by the Governor, and two each to be appointed by the Lieutenant Governor and the Speaker of the House of Representatives. The Lieutenant Governor's appointees shall be members of the Senate, and the Speaker's appointees shall be members of the House of Representatives, but no other member of the General Assembly or officer or employee of the State or spouse of any such member, officer or employee may be a member of the Commission. Commission members shall designate a chairman from among them annually. The original appointments of nonlegislator members will expire on June 30, 1980. The terms of the nonlegislator members appointed thereafter shall be three years, commencing on July 1 of the year in which the predecessor's term expired. The initial legislator-members shall be appointed after July 1, 1977; they and their successors shall serve until the expiration of the legislative terms which they are serving at the time of their appointment to the Commission and until their successors are appointed or until they cease to be members of the General Assembly, whichever occurs first. Vacancies in the positions of legislator-members shall be filled in the same manner that the vacated position was originally filled, and the person so appointed shall serve for the remainder of the unexpired term of the person whom he succeeds. Vacancies in the positions of the Governor's appointees shall be filled by the Governor for the unexpired term.

(b) Commission members who are not legislators shall receive as compensation for their services the same per diem and travel expense allowances as members of occupational licensing boards pursuant to G.S. 93B-5. Legislator-members of the Commission shall be compensated pursuant to G.S. 120-3.1.

(c) The Commission shall utilize the expertise of the Attorney General and other appropriate agencies in performing its duties under this act.

(d) The Commission is authorized to employ such clerical, technical and professional staff, and to obtain such consulting services, as the Commission deems necessary, and to defray the expenses thereof from any funds made available to it through grants, appropriations or any other source. The number of staff persons to be employed, the salary to be paid to each, the fees to be paid to consultants, and the expenditure of funds for any purpose by the Commission shall be subject to the approval of the Legislative Services Commission.

(e) Except as herein provided, Commission members shall not be permanent salaried employees of the Commission.

(f) The Commission shall terminate and the authority granted by this act shall expire on June 30, 1983. (1977, c. 712, s. 6.)

§ 143-34.16. Performance evaluation of programs scheduled for termination. — (a) The Governmental Evaluation Commission shall cause to be conducted a performance evaluation of each program or function scheduled for termination under this Article. The agency responsible for each program or function under review shall provide the Commission with the following information:

(1) The identity of all agencies or subunits under the direct or advisory control of the agency whose program is under review;

(2) All powers, duties, and functions currently performed by the agency whose program is under review, or that are currently inactive;

(3) All constitutional, statutory, or other authority under which said powers, duties, and functions of the agency are carried out;

(4) Any powers, duties, or functions which, in the opinion of the agency under review, are being performed and duplicated to any extent by another agency within the State including the manner in which, and the extent to which, this duplication of efforts is occurring and any recommendations as to eliminating such a situation;

(5) Any powers, duties, or functions which, in the opinion of the agency under review, are inconsistent with current and projected public demands and should be terminated or altered; and

(6) Any other information which the Commission in its discretion, feels is necessary and proper in carrying out its duties to review.

(b) In conducting the evaluations, the Commission shall take into consideration, but not be limited to considering, the factors listed in G.S. 143-34.17. Upon completion of the evaluation, the Commission shall submit a report to the General Assembly, including the Commission's recommendation as to whether the program or function in question should be terminated, reconstituted, reestablished, or continued, with or without modification of the relevant statutes, and whether the responsible agency should be terminated, reconstituted, reestablished, or continued, with or without modification of the relevant statutes. The Commission shall hold public hearings as provided in G.S. 143-34.18 for the purpose of reviewing its proposed report. A copy of the report shall be made available to each member of the General Assembly at least six months prior to the scheduled date of termination under G.S. 143-34.11 to 143-34.13.

(c) The Commission may review related programs or functions not scheduled for termination which, in the Commission's judgment, should be consolidated or better coordinated with programs scheduled for termination, and as a result of such review the Commission may recommend legislation providing for consolidation or coordination of related programs or for additional related programs to be scheduled for termination. (1977, c. 712, s. 7.)

§ 143-34.17. Evaluation elements. — The elements used by the Governmental Evaluation Commission in making its determination of the need for continuance of an agency program or function shall include, but not be limited to:

(1) An identification of the objectives intended for the agency program and the problem or need which the program was intended to address;

(2) An assessment of the degree to which the original objectives of the agency program have been achieved expressed in terms of performance, impact, or accomplishments of the program and of the problem or need which it was intended to address. Such assessment shall employ procedures or methods of analysis which the Commission determines to be appropriate to the type or character of the program;

(3) A statement of the performance and accomplishments of the agency program in the last fiscal year and of the budgetary costs incurred in the operation of the program;

(4) A statement of the number and types of persons served by the agency program;

(5) A summary statement, for the last completed fiscal year, of the number, by grade, and cost of personnel employed in carrying out the agency program and a summary statement of the cost of personnel employed under contract in carrying out the program;

(6) An assessment of the degree to which the overall policies of the agency program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the agency meet the objectives of the General Assembly in establishing the program;

(7) An assessment of the effect of the agency program on the State economy including costs to consumers and businesses;

(8) An evaluation of the reporting and record-keeping requirements and activities of the agency program, including the management and control of information and records and the value of the information gathered compared to the cost to respondents, and an assessment of

methods to reduce and simplify the reporting and record-keeping requirements;

(9) A summary statement of the budget and program of the agency for the current fiscal year and budget projections for the next succeeding fiscal year if the program were to be continued;

(10) An assessment of whether the agency has permitted qualified applicants to serve the public, and whether the agency has encouraged participation by the public in making its rules and decisions, as opposed to participation solely by the persons it regulates;

(11) An evaluation of the extent to which operation has been efficient and responsive to public needs;

(12) An evaluation of the extent to which complaints have been expeditiously processed to completion in the public interest; and

(13) An analysis of the services and performance estimated to be achieved if the agency or agency program were continued. (1977, c. 712, s. 8.)

§ 143-34.18. Hearings by Governmental Evaluation Commission; final action by Commission. — (a) Before submitting a report to the General Assembly concerning the performance evaluation of any program or function, the Commission shall hold one or more public hearings concerning its proposed report. The Commission shall give notice of each such public hearing and offer any person an opportunity to present data, views, and arguments. The notice shall be given at least 10 days before the public hearing and at least 20 days before the adoption or amendment of the report. The notice shall include:

(1) A reference to the statutory authority for the report (this act);

(2) The time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted either at the hearing or at other times by any person;

(3) A statement of the terms or substance of the proposed report or a description of the subjects and issues involved.

(b) The Commission shall transmit copies of the notice to the Attorney General and all persons and agencies who have requested the Commission in writing for advance notice of proposed action which may affect them. The notices shall be in writing and shall be forwarded by mail or otherwise to the last address specified by the person.

(c) Any such notice shall be published at least once in one newspaper of general circulation in Wake County. The Commission shall also deliver a copy of the notice to the agency or agencies responsible for the program or function that is the subject of the performance evaluation.

(d) The Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Commission shall permit anyone who so desires to file a written argument or other statement with it in relation to the proposed report any time within 10 days following the conclusion of any public hearing or within such additional time as it may allow by notice given as prescribed in this section.

(e) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed report pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General, with the members of the General Assembly and with the agency or agencies responsible for the program or function that is the subject of the report.

(f) The procedure set forth in this section shall be a complete procedure for the report, hearings, notices, and filing requirements that are the subject of this section. The Commission and its proceedings shall be exempt from the requirements of the Administrative Procedure Act (Chapter 150A), and any other requirements of law concerning the subjects of this section including without limitation any statutory requirements concerning filing of notices or reports with the Secretary of State or the Attorney General.

(g) The Commission is authorized to meet or to hold hearings in the State Legislative Building when the General Assembly is not in session, subject to the determination by the Legislative Services Commission that space is available. (1977, c. 712, s. 9.)

§ 143-34.19. Hearings and recommendations by legislative committees of reference. — (a) Prior to the termination, continuation, or reestablishment of any such program or function a committee of reference in each house of the General Assembly shall hold a public hearing, receiving testimony from the public and the agency involved, and in such a hearing the agency shall have the burden of demonstrating a public need for the continued existence of the program or function. The "committees of reference" shall be the Senate and House Committees on State Government, respectively, or such other committees as the respective presiding officers may determine. The committees of reference may hold joint public hearings and may meet jointly to formulate their recommendations.

(b) In developing their legislative recommendations, the committees of reference shall consider the evaluation elements listed in G.S. 143-34.17; shall proceed with a view to continuing productive, efficient and active programs which are in the public interest, to eliminating inactive programs, and to eliminating or consolidating overlapping or duplicating programs; and shall consider the extent to which changes are needed in enabling laws. (1977, c. 712, s. 10.)

§ 143-34.20. Separate bills required for each agency. — No more than one agency, board, council, committee, commission, or association shall be continued or reestablished in any bill recommended under this act, and such agency, board, council, commission, or association shall be mentioned in the bill's title. (1977, c. 712, s. 11.)

§ 143-34.21. Claims against agencies not to be terminated. — This act shall not cause the dismissal of any claim or right of a citizen against any such agency or any claim or right of agency terminated pursuant to this section which is subject to litigation. (1977, c. 712, s. 12.)

ARTICLE 2.

State Personnel Department.

§§ 143-35 to 143-47: Repealed by Session Laws 1965, c. 640, s. 1.

Editor's Note. — Session Laws 1965, c. 640, s. 1, repealed this Article and Article 2A of this Chapter, and repealed and rewrote Chapter 126. This Article was codified from Session Laws 1949, c. 718, as amended by Session Laws 1949, c. 1174; 1953, cc. 675, 1085; 1957, cc. 269, 541, 1004, 1349, 1447; 1961, cc. 536, 625, 833; 1963, cc. 958, 1177. For present provisions as to the State Personnel System, see §§ 126-1 through 126-12.

ARTICLE 2A.

Incentive Award Program for State Employees.

§§ 143-47.1 to 143-47.5: Repealed by Session Laws 1965, c. 640, s. 1.

Editor's Note. — Session Laws 1965, c. 640, s. 1, repealed this Article and Article 2 of this Chapter, and repealed and rewrote Chapter 126. This Article was codified from Session Laws 1963, c. 1047. For present provisions as to State Personnel System, see §§ 126-1 through 126-12.

ARTICLE 3.

Purchases and Contracts.

§ 143-48. Purpose and implementation. — The purpose of this Article is to provide for the effective and economical acquisition, management and disposition of goods and services by and through the Department of Administration. (1931, c. 261, s. 1; c. 396; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Revision of Article. — Session Laws 1971, c. 587, revised and rewrote this Article, substituting present §§ 143-48 to 143-63 for former §§ 143-48 to 143-64. No attempt has been made to point out the changes effected by the 1971 act, but, where appropriate, the historical citations to the former sections have been added to corresponding sections of the new Article.

Editor's Note. — The 1975 amendment deleted "the Purchase and Contract Division of" preceding "the Department of Administration" at the end of the section.

Session Laws 1975, 2nd Sess., c. 983, s. 122, provides: "Each State department, institution, or agency shall make every reasonable effort to assure that purchase orders will be limited to goods necessary to operate in the fiscal year in which the appropriation for such purchase is authorized. Each State department, institution, or agency shall furnish the State Auditor and Department of Administration, by July 31 of each year, a statement of all obligations outstanding at the end of the previous fiscal year."

State Government Reorganization. — The Purchase and Contract Division remains in the Department of Administration under § 143B-368, enacted by Session Laws 1975, c. 879, which repealed former § 143A-82.

§ 143-49. Powers and duties of Secretary. — The Secretary of Administration shall have power and authority, and it shall be his duty, subject to the provisions of this Article:

(1) To canvass sources of supply, and to purchase or to contract for the purchase, lease and lease-purchase of all supplies, materials, equipment and other tangible personal property required by the State government, or any of its departments, institutions or agencies under competitive bidding or otherwise as hereinafter provided.

(2) To establish and enforce specifications which shall apply to all supplies, materials and equipment to be purchased or leased for the use of the State government or any of its departments, institutions or agencies.

(3) To purchase or to contract for, by sealed, competitive bidding or other suitable means, all contractual services and needs of the State government, or any of its departments, institutions, or agencies; or to authorize any department, institution or agency to purchase or contract for such services.

When the award of any contract for contractual services exceeding a cost of one hundred thousand dollars ($100,000) requires negotiation with prospective contractors, the Secretary shall request and the Attorney General shall assign a representative of the office of the Attorney General to assist in negotiation for the award of the contract. It shall be the duty of such representative to assist and advise in obtaining the most favorable contract for the State, to evaluate all proposals available from prospective contractors for that purpose, to interpret proposed contract terms and to advise the Secretary or his representatives of the liabilities of the State and validity of the contract to be awarded. All contracts and drafts of such contracts shall be prepared by the office of the Attorney General and copies thereof shall be retained by such office for a period of three years following the termination of such contracts. The term "contractual services" as used in this subsection shall mean work performed by an independent contractor requiring specialized knowledge, experience, expertise or similar capabilities wherein the service rendered does not consist primarily of acquisition by this State of equipment or materials and the rental of equipment, materials and supplies. The term "negotiation" as used herein shall not be deemed to refer to contracts entered into or to be entered into as a result of a competitive bidding process.

(4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or agencies; to provide for transfer or exchange to or between all State departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused; and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies. All receipts from the transfer or sale of such surplus, obsolete or unused equipment of State departments, institutions and agencies which are supported by appropriations from the general fund, except where such receipts have been anticipated for, or budgeted against the cost of replacements, shall be placed by the Secretary in an equipment reserve fund from which expenditures may be made only with prior approval of the Director of the Budget and the Advisory Budget Commission. The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control.

(5) To make provision for or to contract for all State printing, including all printing, binding, paper stock and supplies or materials in connection with the same.

(6) To make available to nonprofit corporations operating charitable hospitals, and to counties, cities, towns, governmental entities and other subdivisions of the State and public agencies thereof in the expenditure of public funds, the services of the Department of Administration in the purchase of materials, supplies and equipment under such rules, regulations and procedures as the Advisory Budget Commission may adopt. In adopting rules and regulations any or all provisions of this Article may be made applicable to such purchases and contracts made through the Department of Administration, and in addition the rules and regulations shall contain a requirement that payment for all such purchases be made in accordance with the terms of the contract. (1931, c. 261, s. 2; 1951, c. 3, s. 1; c. 1127, s. 1; 1957, c. 269, s. 3; 1961, c. 310; 1971, c. 587, s. 1; 1975, c. 580; c. 879, s. 46; 1977, c. 733.)

Cross Reference. — As to settlement of affairs of inoperative boards and agencies, see §§ 143-267 through 143-272.

Editor's Note. — The first 1975 amendment added the second sentence of subdivision (4).

The second 1975 amendment substituted "Secretary" for "Director" in the introductory language and in the second sentence of subdivision (4).

The 1977 amendment added the second paragraph of subdivision (3).

Opinions of Attorney General. — Mr. J.C. Eagles, Jr., Vice Chancellor, Finance, University of North Carolina, 40 N.C.A.G. 736 (1969).

§ 143-49.1. Purchases by volunteer nonprofit fire department and lifesaving and rescue squad. — In consideration of public service, any volunteer nonprofit fire department, lifesaving and rescue squad in this State is hereby authorized to purchase gas, oil, and tires for their official vehicles under State contract through the Department of Administration, and to purchase surplus property through the Department of Administration on the same basis applicable to counties and municipalities.

The Department of Administration shall make its services available to these organizations in the purchase of such supplies under the same laws, rules and regulations applicable to nonprofit organizations as provided in G.S. 143-49. (1973, c. 442.)

§ 143-50. Certain contractual powers exercised by other departments transferred to Secretary. — All rights, powers, duties and authority relating to State printing, or to the acquisition of supplies, materials, equipment, and contractual services, now imposed upon or exercised by any State department, institution or agency under the several statutes relating thereto, are hereby transferred to the Secretary of Administration and all said rights, powers, duty and authority are hereby imposed upon and shall hereafter be exercised by the Secretary of Administration under the provisions of this Article. (1931, c. 261, s. 3; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" in two places.

§ 143-51. Reports to Secretary required of all agencies as to needs. — It shall be the duty of all departments, institutions, or agencies of the State government to furnish to the Secretary of Administration when requested, and on forms to be prescribed by him, estimates of all supplies, materials and equipment needed and required by such department, institution or agency for such periods in advance as may be designated by the Secretary of Administration. (1931, c. 261, s. 4; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" in two places.

§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts. — As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials and equipment needed and required by State departments, institutions and agencies to determine the total requirements for any given commodity. Where such total requirements will involve an expenditure in excess of two thousand five hundred dollars ($2,500) and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation at least once and at least 10 days prior to the date designated for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration, with the approval of the Advisory Budget Commission, when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration with the approval of the Advisory Budget Commission, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" throughout the section.

Opinions of Attorney General. — Mr. R.D. McMillan, State Purchasing Officer, Department of Purchase and Contract, 40 N.C.A.G. 545 (1969).

Public Bidding Requirements Not to Be Dispensed with. — See opinion of Attorney General to Mr. R.D. McMillan, Jr., State Purchasing Officer, Department of Administration, 41 N.C.A.G. 48 (1970).

§ 143-52.1: Repealed by Session Laws 1971, c. 587, s. 1.

Revision of Article. — See same catchline under § 143-48.

§ 143-53. Rules and regulations. — The Advisory Budget Commission shall have the necessary authority to adopt rules and regulations governing the following:

(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

(2) Prescribing routine for securing bids on items that do not exceed two thousand five hundred dollars ($2,500) in value.

(3) Defining contractual services for the purposes of G.S. 143-49(3).

(4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.

(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding.

(6) Prescribing conditions under which partial, progressive and multiple awards may be made.

(7) Prescribing conditions and procedures governing the purchase of used equipment, materials and supplies.

(8) Providing conditions under which bids may be rejected in whole or in part.

(9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

(10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than state-appropriated.

(11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.

(12) Adopting any other rules and regulations to carry out the duties and purpose of this Article.

The purpose of rules and regulations promulgated hereunder shall be to promote sound purchasing management; and prior to adoption, they shall be submitted to the Attorney General for opinion as to the legal effect thereof. Such rules and regulations shall become effective upon filing with the Secretary of State. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment deleted "Designating personnel and" at the beginning of subdivision (1).

§ 143-54. Certification that bids were submitted without collusion. — The Director of Administration shall require bidders to certify that each bid is submitted competitively and without collusion. False certification shall be punishable as in cases of perjury. (1961, c. 963; 1971, c. 587, s. 1.)

§ 143-55. Requisitioning for supplies by agencies; must purchase through sources certified. — After sources of supply have been established by contract and certified by the Secretary of Administration to the said departments, institutions and agencies as herein provided for, it shall be the duty of all departments, institutions and agencies to make requisition or issue orders on forms to be prescribed by the Secretary of Administration, for all supplies, materials and equipment required by them upon the sources of supply so certified, and, except as herein otherwise provided for, it shall be unlawful for them, or any of them, to purchase any supplies, materials or equipment from other sources than those certified by the Secretary of Administration. One copy of such requisition or order shall be furnished to and when requested by the Secretary of Administration. (1931, c. 261, s. 6; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" throughout the section.

§ 143-56. Certain purchases excepted from provisions of Article. — Except as may otherwise be ordered by the Secretary of Administration, with the approval of the Advisory Budget Commission, the purchase of supplies, materials and equipment through the Secretary of Administration shall not be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.

(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration with the approval of the Advisory Budget Commission.

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review. (1931, c. 261, s. 7; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" throughout the section.

§ 143-57. Purchases of articles in certain emergencies. — In case of any emergency or pressing need arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Secretary of Administration shall have power to obtain or authorize obtaining in the open market any necessary supplies, materials, equipment, printing or services for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency or need and the transactions thereunder shall be made a matter of record promptly thereafter. (1931, c. 261, s. 8; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" near the middle of the first sentence.

§ 143-58. Contracts contrary to provisions of Article made void. — If any department, institution or agency of the State government, required by this Article and the rules and regulations adopted pursuant thereto applying to the purchase or lease of supplies, materials, equipment, printing or services through the Secretary of Administration, or any nonstate institution, agency or instrumentality duly authorized or required to make purchases through the Department of Administration, shall contract for the purchase or lease of such supplies, materials, equipment, printing or services contrary to the provisions of this Article or the rules and regulations made hereunder, such contract shall be void and of no effect. If any such State or nonstate department, institution, agency or instrumentality purchases any supplies, materials, equipment, printing or services contrary to the provisions of this Article or the rules and regulations made hereunder, the executive officer of such department, institution, agency or instrumentality shall be personally liable for the costs thereof. (1931, c. 261, s. 9; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1977, c. 148, s. 3.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" near the middle of the first sentence.

The 1977 amendment substituted "equipment, printing or services" for "or equipment" in two places.

§ 143-59. Preference given to North Carolina products and citizens, and articles manufactured by State agencies. — The Secretary of Administration and any State agency authorized to purchase foodstuff or other products, shall, in the purchase of or in the contracting for foods, supplies, materials, equipment, printing or services give preference as far as may be practicable to such products or services manufactured or produced in North Carolina or furnished by or through citizens of North Carolina: Provided, however, that in giving such preference no sacrifice or loss in price or quality shall be permitted; and provided further, that preference in all cases shall be given to surplus products or articles produced and manufactured by other State departments, institutions, or agencies which are available for distribution. (1931, c. 261, s. 10; 1933, c. 441, s. 2; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" near the beginning of the section.

§ 143-60. Rules and regulations covering certain purposes. — The Secretary of Administration, with the approval of the Advisory Budget Commission, may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this Article:

(1) Requiring reports by State departments, institutions, or agencies of stocks of supplies and materials and equipment on hand and prescribing the form of such reports.

(2) Prescribing the manner in which supplies, materials and equipment shall be delivered, stored and distributed.

(3) Prescribing the manner of inspecting deliveries of supplies, materials and equipment and making chemicals and/or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made in compliance with specifications.

(4) Prescribing the manner in which purchases shall be made in emergencies.

(5) Providing for such other matters as may be necessary to give effect to the foregoing rules and provisions of this Article.

Further, the Secretary of Administration, with the approval of the Advisory Budget Commission, may prescribe appropriate procedures necessary to enable the State, its institutions and agencies, to obtain materials surplus or otherwise available from federal, State or local governments or their disposal agencies. (1931, c. 261, s. 11; 1945, c. 145; 1957, c. 269, s. 3; 1961, c. 772; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" in two places.

§ 143-61: Repealed by Session Laws 1975, c. 879, s. 45.

Cross Reference. — For present provisions as to the Standardization Committee, see § 143B-398.

§ 143-62. Law applicable to printing Supreme Court Reports not affected. — Nothing in this Article shall be construed as amending or repealing G.S. 7A-6(b), relating to the printing of the Supreme Court Reports, or in any way changing or interfering with the method of printing or contracting for the printing of the Supreme Court Reports as provided for in said section. (1931, c. 261, s. 13; 1969, c. 44, s. 75; 1971, c. 587, s. 1.)

§ 143-63. Financial interest of officers in sources of supply; acceptance of bribes. — Neither the Secretary of Administration, nor any assistant of his, nor any member of the Advisory Budget Commission, nor of the Standardization

Committee shall be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any materials, equipment or supplies, nor in any firm, corporation, partnership or association furnishing any such supplies, materials or equipment to the State government, or any of its departments, institutions or agencies, nor shall such Secretary, assistant, or member of the Commission or Committee accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded, by rebate, gifts or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation. Any violation of this section shall be deemed a felony and shall be punishable by fine or imprisonment, or both. Upon conviction thereof, any such Secretary, assistant or member of the Commission or Committee shall be removed from office. (1931, c. 261, s. 15; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" in three places.

§ 143-63.1. Sale, disposal and destruction of firearms. — (a) Except as hereinafter provided, it shall be unlawful for any employee, officer or official of the State in the exercise of his official duty to sell or otherwise dispose of any pistol, revolver, shotgun or rifle to any person, firm, corporation, county or local governmental unit, law-enforcement agency, or other legal entity.

(b) It shall be lawful for the Department of Administration, in the exercise of its official duty, to sell any weapon described in subsection (a) hereof, to any county or local governmental unit law-enforcement agency in the State; provided, however, that such law-enforcement agency files a written statement, duly notarized, with the seller of said weapon certifying that such weapon is needed in law enforcement by such law-enforcement agency.

(c) All weapons described in subsection (a) hereof which are not sold as herein provided within one year of being declared surplus property shall be destroyed by the Department of Administration. (1973, c. 666, ss. 1-3; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment deleted "Purchase and Contract Division of the" preceding "Department of Administration" in subsections (b) and (c).

Section 20-187.2(a) Not Affected. — See opinion of Attorney General to Mr. R.D. McMillan, Jr., State Purchasing Officer, 43 N.C.A.G. 58 (1973).

§ 143-64: Repealed by Session Laws 1971, c. 587, s. 1.

Revision of Article. — See same catchline under § 143-48.

ARTICLE 3A.

State Agency for Surplus Property.

§ 143-64.1. Department of Administration designated State agency for surplus property. — The Department of Administration is hereby designated as the State agency for surplus property, and with respect to the acquisition of surplus property said agency shall be subject to the supervision and direction of the Secretary of Administration who is authorized to prescribe the duties which shall be assigned to the personnel of said Department for surplus property purposes. (1953, c. 1262, s. 1; 1957, c. 269, s. 3; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" near the middle of the section.

State Government Reorganization. — The State agency for surplus property remains in the Department of Administration under § 143B-368, enacted by Session Laws 1975, c. 879, which repealed former § 143A-82.

§ 143-64.2. Authority and duties of the State agency for surplus property. — (a) The State agency for surplus property is hereby authorized and empowered

(1) To acquire from the United States of America such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for educational purposes, public health purposes, or civil defense purposes, including research;

(2) To warehouse such property; and

(3) To distribute such property to tax-supported or nonprofit and tax-exempt (under section 501(c)(3) of the United States Internal Revenue Code of 1954) medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, civil defense organizations, and such other eligible donees within the State as are permitted to receive surplus property of the United States of America under the Federal Property and Administrative Services Act of 1949, as amended.

(b) For the purpose of executing its authority under this Article, the State agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and regulations as may be deemed necessary; and take such other action as is deemed necessary and suitable in the administration of this Article, including the enactment and promulgation of such rules and regulations as may be necessary to bring this Article and its administration into conformity with any federal statutes or rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(c) The State agency for surplus property herein designated is authorized and empowered to appoint such advisory boards or committees as may be necessary to the end that this Article, and the rules and regulations promulgated hereunder, may conform with federal statutes and rules and regulations promulgated under federal statutes for the acquisition and disposition of surplus property.

(d) The State agency for surplus property is authorized and empowered to take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the State, require such reports and make such investigations as may be required by law or regulation of the United States of America in connection with the receipt, warehousing, and distribution of property received by the State agency for surplus property from the United States of America.

(e) The State agency for surplus property is authorized and empowered to act as clearing house of information for the public and private nonprofit institutions and agencies referred to in subsection (a) of this section, to locate property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above-mentioned institutions and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions and agencies in every way possible in the consummation or acquisition or transactions hereunder.

(f) The State agency for surplus property, in the administration of this Article, shall cooperate to the fullest extent consistent with the provisions of this Article, with the departments or agencies of the United States of America and shall make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for, property donable or donated to the State. (1953, c. 1262, s. 2; 1965, c. 1105, ss. 1, 2.)

§ 143-64.3. Power of Department of Administration and Secretary to delegate authority. — The Department of Administration and/or the Secretary of Administration may delegate to any employees of the State agency for surplus property such power and authority as he or they deem reasonable and proper for the effective administration of this Article. The Department of Administration and/or the Secretary of Administration may, in his or their discretion, bond any person in the employ of the State agency for surplus property, handling moneys, signing checks, or receiving or distributing property from the United States under authority of this Article. (1953, c. 1262, s. 3; 1957, c. 269, s. 3; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary of Administration" for "Director of said Department" in two places.

§ 143-64.4. Warehousing, transfer, etc., charges. — The State agency for surplus property is hereby authorized and empowered to assess and collect service charges or fees for the acquisition, receipts, warehousing, distribution or transfer of any property acquired by donation from the United States of America for educational purposes, public health purposes, public libraries or civil defense purposes, including research, and any such charges made or fees assessed shall be limited to those reasonably related to the costs of care and handling in respect to the acquisition, receipts, warehousing, distribution or transfer of the property by the State agency for surplus property. (1953, c. 1262, s. 4; 1965, c. 1105, s. 3.)

§ 143-64.5. Department of Agriculture exempted from application of Article. — Notwithstanding any provisions or limitations of this Article, the North Carolina Department of Agriculture is authorized and empowered to distribute food, surplus commodities and agricultural products under contracts and agreements with the federal government or any of its departments or agencies, and the North Carolina Department of Agriculture is authorized and empowered to adopt rules and regulations in order to conform with federal requirements and standards for such distribution and also for the proper distribution of such food, commodities and agricultural products. To the extent set forth above and in this section, the provisions of this Article shall not apply to the North Carolina Department of Agriculture. (1953, c. 1262, s. 5.)

§§ 143-64.6 to 143-64.9: Reserved for future codification purposes.

ARTICLE 3B.

Energy Policy for State Agencies Concerning Major Construction or Renovation of Buildings.

§ 143-64.10. Findings of General Assembly. — (a) The General Assembly hereby finds:

(1) That state-owned and assisted facilities have a significant impact on the State's consumption of energy;

(2) That energy conservation practices adopted for the design, construction, and utilization of these facilities will have a beneficial effect on the State's overall supply of energy;
(3) That the cost of the energy consumed by these facilities over the life of the facilities must be considered, in addition to the initial cost of constructing such facilities; and
(4) That the cost of energy is significant and facility designs must take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the energy consumed, and of operation and maintenance of the facility as it affects energy consumption.

(b) The General Assembly declares that it is the policy of the State of North Carolina to insure that energy conservation practices are employed in the design of state-owned and assisted facilities. To this end the General Assembly encourages State agencies to analyze the cost of energy consumption of each facility constructed or each major facility constructed or renovated, over its economic life, in addition to the initial construction or renovation cost. (1975, c. 434, s. 1.)

§ 143-64.11. Definitions. — For purposes of this Article:
(1) The term "economic life" means the projected or anticipated useful life of a facility.
(2) The term "energy-consumption analysis" means the evaluation of all energy-consuming systems and components by demand and type of energy, including the internal energy load imposed on a facility by its occupants, equipment and components, and the external energy load imposed on the facility by climatic conditions.
(3) The term "facility" means any building or facility on which construction is initiated six months or more after July 1, 1975.
(4) The term "initial cost" means the required cost necessary to construct a facility or construct or renovate a major facility.
(5) The term "life-cycle cost" means the cost of a facility including its initial cost, and the cost, over the economic life of the facility, of the energy consumed and of operation and maintenance of the facility as it affects energy consumption.
(6) The term "major facility" means any building or facility of 40,000 or more gross square feet on which construction or renovation is initiated six months or more after July 1, 1975, and wherein significant energy demands will exist.
(7) The term "State agency" means the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, or any board or governing body of a political subdivision of the State, or an agency, commission, or authority of a political subdivision of the State.
(8) The term "state-assisted facility" or "major state-assisted facility" means a facility constructed, or major facility constructed or renovated, in whole or in part with State funds or with funds guaranteed or insured by a State agency.
(9) The term "State facility" or "major State facility" means a facility constructed, or a major facility constructed or renovated, by a State agency. (1975, c. 434, s. 2.)

§ 143-64.12. Authority and duties of State agencies. — (a) The General Assembly authorizes and directs that State agencies shall carry out the construction of State facilities, and the construction and renovation of major State facilities, under their jurisdiction or programs for the construction of state-assisted facilities and the construction and renovation of major state-assisted facilities in such a manner as to further the policy declared herein, insuring that life-cycle cost analyses and energy-conservation practices are employed in new state-owned and assisted facilities and in new or renovated major state-owned and assisted facilities.

(b) Each State agency having jurisdiction over any state-owned or assisted facilities' construction program shall evaluate each project, and if consistent with good architectural, engineering, and economic practice, require life-cycle cost analysis. Nothing in this Article shall deprive or limit any State agency which has review authority over design or construction plans from requiring a life-cycle cost analysis.

(c) This life-cycle cost analysis shall include but not be limited to such elements as:

(1) The coordination, orientation and positioning of the facility on its physical site;
(2) The amount and type of fenestration employed in the facility;
(3) Thermal characteristics of materials, and the amount of insulation incorporated into the facility design;
(4) The variable occupancy and operating conditions of the facility, including illumination levels;
(5) Architectural features which affect energy consumption; and
(6) An energy-consumption analysis of the major facility's heating, ventilating, and air-conditioning system, lighting system, and all other energy-consuming systems. The energy-consumption analysis of the operation of energy-consuming systems in the major facility should include but not be limited to:
    a. The comparison of two or more system alternatives;
    b. The simulation or engineering evaluation of each system over the entire range of operation of the major facility for a year's operating period; and
    c. The engineering evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

(d) The life-cycle cost analysis performed for each major facility shall provide but not be limited to the following information:

(1) The initial estimated cost of each energy-consuming system being compared and evaluated;
(2) The estimated annual operating cost of all utility requirements;
(3) The estimated annual cost of maintaining each energy-consuming system; and
(4) The average estimated replacement cost for each system expressed in annual terms for the economic life of the major facility.

(e) The life-cycle cost analysis shall be certified by a registered architect or registered professional engineer, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and in conformance with the provisions of G.S. 133-1.1.

(f) Provided, however, that in order to protect the integrity of historic buildings, no provision of this Chapter shall be interpreted to require such analysis with respect to any property eligible for, nominated to, or entered on the National Register of Historic Places, pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic building located within an historic district as provided in Chapters 160A or 153A of the North Carolina General Statutes; any historic building listed, owned, or under the jurisdiction of an historic properties commission as provided in Chapter 160A or 153A; nor any state-owned or state-assisted historic property.

(g) Selection of the optimum system or combination of systems to be incorporated into the design of the major facility shall be based on the life-cycle cost analysis over the economic life of the facility. (1975, c. 434, s. 3.)

§ 143-64.13. Responsibility of chief executives. — The chief executives of all State agencies, as defined in this Article, shall be responsible for dissemination and effective performance of the policy established herein. (1975, c. 434, s. 4.)

§ 143-64.14. Application of Article. — The provisions of this Article shall not apply to municipalities or counties, nor to any agency or department of any municipality or county. (1975, c. 434, s. 5.)

§§ 143-64.15 to 143-64.19: Reserved for future codification purposes.

ARTICLE 3C.

Contracts to Obtain Consultant Services.

§ 143-64.20. "Agency" defined; Governor's approval required. — (a) For purposes of this Article the term "agency" shall mean every State agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the State government.

(b) No State agency shall contract to obtain services of a consultant or advisory nature unless the proposed contract has been justified to and approved in writing by the Governor of North Carolina. All written approvals shall be maintained on file as part of the agency's records for not less than five years. (1975, c. 887, s. 1.)

Applicability of Provisions of Article to Contracts for Planning, Design and Construction of Highways. — The provisions of Chapter 887 applicable to "contracts for services of a consultant or advisory nature" do not include contracts for the planning, design and construction of highways which the Board of Transportation is authorized to enter into by the provisions of Chapter 136 of the General Statutes. Opinion of Attorney General to Mr. Billy Rose, 45 N.C.A.G. 71 (1975).

§ 143-64.21. Findings to be made by Governor. — The Governor, before granting written approval of any such contract, must find:

(1) That the contract is reasonably necessary to the proper function of such State agency; and

(2) That such services or advice cannot be performed within the resources of such State agency;

(3) That the estimated cost is reasonable as compared with the likely benefits or results; and

(4) That the General Assembly has appropriated funds for such contract or that such funds are otherwise available; and

(5) That all rules and regulations of the Department of Administration have been or will be complied with. (1975, c. 879, s. 46; c. 887, s. 2.)

Editor's Note. — Pursuant to Session Laws 1975, c. 879, s. 46, "Department of Administration" has been substituted for "Division of Purchase and Contract" near the end of this section as enacted by Session Laws 1975, c. 887, s. 2.

§ 143-64.22. Contracts with other State agencies; competitive proposals. — The rules and regulations of the Department of Administration shall include provisions to assure that all consultant contracts let by State agencies shall be made with other agencies of the State of North Carolina, if such contract can reasonably be performed by them; or otherwise, that wherever practicable a sufficient number of sources for the performance of such contract are solicited for competitive proposals and that such proposals are properly evaluated for award to the State's best advantage. (1975, c. 879, s. 46; c. 887, s. 3.)

Editor's Note. — Pursuant to Session Laws 1975, c. 879, s. 46, "Department of Administration" has been substituted for "Division of Purchase and Contract" near the beginning of the section, as enacted by Session Laws 1975, c. 887, s. 3.

§ 143-64.23. Compliance required; penalty for violation of Article. — No disbursement of State funds shall be made and no such contract shall be binding until the provisions of G.S. 143-64.21 and 143-64.22 have been complied with. Any employee or official of the State of North Carolina who violates this Article shall be liable to repay any amount expended in violation of this Article, plus court costs. (1975, c. 887, s. 4.)

§ 143-64.24. Applicability of Article. — This Article shall not apply to the General Assembly, special study commissions, the Research Triangle Institute, or the Institute of Government, nor shall it apply to attorneys employed by the North Carolina Department of Justice, or physicians or doctors performing contractual services for any State agency. (1975, c. 887, s. 5; 1977, c. 802, s. 50.57.)

Editor's Note. — The 1977 amendment inserted "the Research Triangle Institute" near the beginning of the section. Session Laws 1977, c. 802, s. 53, contains a severability clause.

ARTICLE 4.

World War Veterans Loan Administration.

§§ 143-65 to 143-105: Deleted by Session Laws 1951, c. 349.

ARTICLE 5.

Check on License Forms, Tags and Certificates Used or Issued.

§ 143-106. Authority of State Auditor as to blank forms of licenses, etc.; monthly report to Auditor; spoiled and damaged forms; forms marked "void" and unnumbered forms. — The Auditor shall have the authority to require State departments and institutions to furnish him with complete information as to all blank forms of licenses, tags, or certificates received by them. At his request, the State departments or agencies issuing and delivering licenses, tags, or certificates shall furnish the Auditor with complete copies or lists of such issuances. If there be any of such blank license forms, tags, or certificates spoiled or in any way damaged so as to be incapable of being used, all such spoiled license forms, tags, or certificates shall be kept by such department or agency subject to the audit and inspection of the Auditor. Any license forms, tags, or certificates being used by the department or agency as a printer's copy, or in any other way being used for a sample, shall be first marked "void" in bold letters on the face of the form. These voided licenses or certificates shall be presented to the Auditor or his representatives before being released. The Auditor may, at his discretion, allow the use of unnumbered license forms or certificates provided the number and amount is entered thereon by an accounting or bookkeeping machine meeting his approval. (1931, c. 398, s. 1; 1951, c. 1010, s. 2.)

Editor's Note. — Session Laws 1951, c. 1010, which rewrote former §§ 143-106 and 143-107 to appear as this section, provided that "nothing contained in this act shall be construed to be in conflict with the Executive Budget Act, General Statutes 143-1 through 143-47."

§ 143-107: Transferred to § 143-106 by Session Laws 1951, c. 1010, s. 2.

ARTICLE 6.

Officers of State Institutions.

§ 143-108. Secretary to be elected from directors. — The board of directors of the various State institutions shall elect one of their number as secretary, who shall act as such at all regular or special meetings of such boards. (1907, c. 883, s. 1; C. S., s. 7517.)

§ 143-109. Directors to elect officers and employees. — All officers and employees of the various State institutions who hold elective positions shall be nominated and elected by the board of directors of the respective institutions. (1907, c. 883, s. 3; C. S., s. 7518.)

§ 143-110. Places vacated for failure to attend meetings. — Unless otherwise specially provided by law, whenever a trustee or director of any institution supported in whole or in part by State appropriation shall fail to be present for two successive years at the regular meetings of the board, his place as trustee or director shall be deemed vacant and shall be filled as provided by law for other vacancies on such boards.

This section shall not apply to any trustee or director who holds office as such by virtue of another public office held by him and shall not apply to any trustee or director chosen by any agency or authority other than the State of North Carolina. (1927, c. 225.)

§ 143-111. Director not to be elected to position under board. — It shall be unlawful for any board of directors, board of trustees or other governing body of any of the various State institutions (penal, charitable, or otherwise) to appoint or elect any person who may be or has been at any time within six months a member of such board of directors, board of trustees, or other governing body, to any position in the institution, which position may be under the control of such board of directors, board of trustees, or other governing body. (1909, c. 831; C. S., s. 7519.)

§ 143-112. Superintendents to be within call of board meetings. — The superintendent of each of the various State institutions shall be present on the premises of his institution and within the call of the board of directors during all regular or special meetings of the board, and shall respond to all calls of the board for any information which it may wish at his hands. (1907, c. 883, s. 1; C. S., s. 7520.)

§ 143-113. Trading by interested officials forbidden. — The directors, stewards, and superintendents of the State institutions shall not trade directly or indirectly with or among themselves, or with any concern in which they are interested, for any supplies needed by any such institutions. (1907, c. 883, s. 2; C. S., s. 7521.)

§ 143-114. Diversion of appropriations to State institutions. — It shall be unlawful for the board of trustees, board of directors, or other body controlling any State institution, to divert, use, or expend any moneys appropriated for the use of said institutions for its permanent improvement and enlargement to the payment of any of the current expenses of said institution or for the payment of the cost of the maintenance thereof; it shall likewise be unlawful for any board of trustees, board of directors, or other controlling body of any State institution to which money is appropriated for its maintenance by the State to divert, use or expend any money so appropriated for maintenance, for the permanent enlargement or permanent equipment, or the purchase of land for said institution. (1921, c. 232, s. 1; C. S., s. 7521 (a).)

§ 143-115. Trustee, director, officer or employee violating law guilty of misdemeanor. — Any member or members of any board of trustees, board of directors, or other controlling body governing any of the institutions of the State, or any officer, employee of, or person holding any position with any of the institutions of the State, violating any of the provisions of G.S. 143-114, shall be guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction judgment shall be rendered by such court removing such member, officer, employee, or person holding any position from his place, office or position, and shall be fined or imprisoned in the discretion of the court. (1921, c. 232, s. 2; C. S., s. 7521 (b).)

§ 143-116. Venue for trial of offenses. — All offenses against G.S. 143-114 and 143-115 shall be held to have been committed in the County of Wake and shall be tried and disposed of by the courts of said county having jurisdiction thereof. (1921, c. 232, s. 3; C. S., s. 7521 (c).)

ARTICLE 7.

Inmates of State Institutions to Pay Costs.

§ 143-117. Institutions included. — All persons admitted to Dorothea Dix Hospital, Broughton Hospital, Cherry Hospital, John Umstead Hospital, Murdoch School, O'Berry School, Caswell School at Kinston, Western Carolina Center, the School for the Deaf at Morganton, the alcoholic rehabilitation centers which are now or hereafter may be authorized, North Carolina Sanatorium at McCain, Western North Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill, North Carolina are hereby required to pay the actual cost of their care, treatment, training and maintenance at such institutions. (1925, c. 120, s. 1; 1949, c. 1070; 1957, c. 1232, s. 29; 1959, c. 1028, ss. 1-7; 1967, c. 188, s. 1; c. 834, s. 1; 1969, c. 20; c. 837, s. 4; 1971, c. 469.)

Editor's Note. — This Article is an attempt to place all State charitable institutions on the same basis, with similar policies, so that the expense which the State bears will be lightened by requiring those who are able to pay to bear the expense of their care, maintenance and treatment. 4 N.C.L. Rev. 17.

This Article Is Constitutional. — See State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

This section applies to any person confined to a State institution (as defined in this section), regardless of the origin of the commitment. State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

This Article is applicable to the criminally insane as well as to the civilly committed. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

Legislative Policy. — The policy stated by the General Assembly is that all persons admitted to State hospitals must pay the actual cost of their care, treatment and maintenance. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

Adequate Standards and No Impermissible Delegation of Power. — This Article sets forth adequate standards from which the various boards of trustees or directors of the institutions can ascertain the charges against a patient and is not an impermissible delegation of power to the hospital board. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

The cost charged by this Article is not characteristic of a tax at all. It is compensation for services rendered the respective inmates or patients by the hospital. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d

660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

Collection from Defendant of Costs for Period from Declaration of Incompetency to Stand Trial and Trial. — See State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

Collection from Defendant of Costs Arising During Period Following Acquittal by Reason of Insanity. — See State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

Collection from Defendant of Costs During Period from Acquittal by Reason of Insanity and Release from Institution. — See State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

Cited in Graham v. Reserve Life Ins. Co., 274 N.C. 115, 161 S.E.2d 485 (1968); State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

§ 143-118. Governing board to fix cost and charges. — The respective boards of trustees or directors of each of said institutions, by whatever name they may be called, are hereby empowered with the final authority to determine and fix the actual cost of such training, treatment, care and maintenance, to be paid for by or for each inmate or patient, and the said boards of trustees or directors shall, to the best of their ability, fix such cost so as to include all the cost of such care, maintenance, treatment and training at such institutions, for each respective inmate, pupil or patient thereof, and the said sum, when so fixed, shall be the actual cost thereof: Provided, that the respective boards of directors of each of said institutions above named, in determining and fixing the actual cost of such care, maintenance and treatment to be paid for by nonindigent inmates thereof, are hereby given full and final authority to fix a general rate of charge, to be paid on a monthly basis by inmates able to pay same, or in cases where indigent inmates later are found to be nonindigent, then such cost for past care and maintenance of such inmates shall be paid in one or more payments based on the monthly rates of cost in effect for the period or periods of time during which such inmates have been confined in said institutions. The past acts of the boards of directors in fixing a monthly rate to be paid by nonindigent inmates for their care and maintenance in such institutions are hereby in every respect ratified and validated, and on all claims and causes of actions for such purpose now pending and are unsettled, or which hereafter may be made or begun for the payment of said past indebtedness for care, maintenance and treatment, the rates so fixed by said board of directors shall prevail and said collections shall be made in accordance therewith. In any action by any of said State's charitable institutions for the recovery of the cost of the care, maintenance and treatment of any inmate, now pending or which may hereafter be instituted, a verified and itemized statement of the account, showing the period of time during which the said nonindigent inmate was confined to the institution, the monthly rate of charge as fixed by said board of directors of such institution for the period of time that the inmate was confined therein, the total amount claimed to be due thereon as predicated upon said rate of charge, and the proper credits for any payments which may have been made on said account, shall be filed with the complaint and shall constitute a prima facie case, and such State institution shall be entitled to a judgment thereon in the absence of allegation and proof on the part of the inmate's guardian, trustee, administrator, executor, or other fiduciary, that said verified and itemized statement of the superintendent or bookkeeper of said institution is not correct because of:

(1) An error in the calculation of the amount due as predicated upon said monthly rate of charge fixed by the board of directors, or
(2) An error as to the period of time during which the inmate was confined in said State institution, or
(3) An error in not properly crediting the account with any cash payment, or payments, which may have been made thereon. (1925, c. 120, s. 2; 1935, c. 186, s. 1.)

Legislative Policy. — The policy stated by the General Assembly is that all persons admitted to State hospitals must pay the actual cost of their care, treatment and maintenance. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

This section sets forth the guidelines to be followed by the board and empowers it to fix the actual cost of maintaining an individual in a State institution. State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

Cited in State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

§ 143-118.1. Governing board may compromise account. — The respective boards of trustees or directors of each of said institutions, by whatever name they may be called, or the Department of Human Resources or the agent of these said boards, to whom this power has been delegated by resolution of the respective boards, are hereby empowered to enter into contracts of compromise of accounts owing the said institutions for past, present or future care at the said institutions, including but not limited to the authority to enter into a contract to charge nothing, which contract shall be binding on the respective institution under the terms and for the period specified in such contract. The rate of charge fixed by such contract shall be paid on a monthly basis, or in lump sum for those amounts already accrued for the duration of the contract; said rates or decision to make no charge shall be determined in the discretion of the board or their agents by the ability to pay of the patient or those responsible in law for his support. In any action by any of the said institutions for the recovery of the cost of the care, maintenance and treatment of any inmate, a verified and itemized statement of account accompanied by a contract entered into pursuant to this section shall have the same effect in instituting a prima facie case as the statement of account filed pursuant to G.S. 143-118. This section shall not be construed as mandatory and if such contract is not entered into or shall terminate, or if the obligor shall default in the payment of the said compromise amount or any installment thereof, then the full monthly charge shall accrue on the patient's account. (1967, c. 958; 1973, c. 476, s. 133.)

Determination as to Ability to Pay. — This section and § 143-120 empower the board to make a factual determination of whether a patient (or such other persons as may be legally responsible for the patient) is financially able to pay. State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

§ 143-119. Payments. — Such cost, when so fixed and determined by the respective boards of trustees or directors of each institution, shall be paid by the patient, pupil or inmate thereof, or by his parent, guardian, trustee or other person legally responsible therefor, and the payment thereof shall constitute a valid expenditure of the funds of any such pupil, patient or inmate by any fiduciary who may be in the control of such funds, and a receipt for the payment of such costs in the hands of such fiduciary shall be a valid voucher to the extent thereof in the settlement of his accounts of his trust. Immediately upon the determination of the cost, as herein provided for, the superintendent of the institution shall notify the patient, pupil, inmate, parent, guardian, trustee, or such other person who shall be legally responsible for the payment thereof, of the monthly amount thereof, and such statement shall be rendered from month to month. The respective boards of trustees or directors of the various institutions are vested with full and complete authority to arrange with the patient, pupil, inmate, parent, guardian, trustee, or other person legally responsible for the cost, for the payment of any portion of such cost monthly or otherwise, in the event such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall not be able to pay the total cost. The head of the various institutions shall annually file with the Auditor of the State a list of all unpaid accounts. The provisions of this Article directing the boards of directors of the various institutions of this State above named to ascertain which of the inmates are nonindigent and able to pay for their care, maintenance and treatment, and also directing said boards of directors to make certain periodical demands upon the guardians or other persons responsible for said inmates for the payment of said charges, and which further directs them to remove all of those inmates found able to pay but who refuse to pay, and all of the other provisions of this Article relating to the manner in which said board shall collect said costs, shall be construed to be directory provisions on the part of the authorities of said institutions and not mandatory, and the failure on the part of said authorities of such institutions to perform any or all of said provisions shall not affect the right of the State institutions so named to recover in any action brought for that purpose, either during the lifetime of said inmates or after their death, in an action against their guardian if alive, or other fiduciary, or against the inmate himself, and if dead, against their personal representatives for the cost of their care, maintenance and treatment in said institutions. (1925, c. 120, s. 3; 1935, c. 186, s. 2.)

Equitable Enforcement Options. — It is clear from a complete reading of this section that dismissal from an institution for failure to pay is only one of the options created by the statute to enforce payment as equitably as possible. State ex rel. Dorothea Dix Hosp. v. Davis, 27 N.C. App. 479, 219 S.E.2d 660 (1975), aff'd, 292 N.C. 147, 232 S.E.2d 698 (1977).

§ 143-120. **Determining who is able to pay.** — From and after March 4, 1925, the respective boards of trustees or directors of each institution shall ascertain which of the various patients, pupils or inmates thereof, or which of the parents, guardians, trustees, or other persons legally responsible therefor, are financially able to pay the cost, to be fixed and determined by this Article, and so soon as it shall be ascertained such patient, pupil, inmate, parent, guardian, trustee or other person legally responsible therefor shall be notified of such cost, and in general of the provisions of this Article and such patient, pupil, inmate or the parent, guardian, trustee, or other person legally responsible therefor shall have the option to pay the same or to remove the patient, pupil or inmate from such institution, unless such person was committed by an order of a court of competent jurisdiction, in which event the liability for the cost as fixed by this Article shall be fixed or determined and payment shall be made in accordance with the terms of this Article. (1925, c. 120, s. 4.)

Determination as to Ability to Pay. — Section 143-118.1 and this section empower the board to make a factual determination of whether a patient (or such other persons as may be legally responsible for the patient) is financially able to pay. State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

Where patient is indigent at time of admission to State hospital and later becomes nonindigent, under this section, the hospital is entitled to recover the actual cost of the ward's care and maintenance for the whole period the ward was an inmate of the hospital, including the time the ward was indigent as well as the time he was not indigent, and including the period both before and after demand by the hospital for the cost of his maintenance, and this is true even though this section was ratified after the admission of the ward. State ex rel. State Hosp. v. Security Nat'l Bank, 207 N.C. 697, 178 S.E. 487, cert. denied, 295 U.S. 761, 55 S. Ct. 921, 79 L. Ed. 1704 (1935).

§ 143-121. **Action to recover costs.** — Immediately upon the fixing of the amount of such actual cost, as herein provided, a cause of action shall accrue therefor in favor of the State for the use of the institution in which such patient, pupil or inmate is receiving training, treatment, maintenance or care, and the State for the use of such institution may sue upon such cause of action in the courts of Wake County, or in the courts of the county in which such institution is located, against said patient, pupil or inmate, or his parents, or either of them, or guardian, trustee, committee, or other person legally responsible therefor, or in whose possession and control there may be any funds or property belonging to either the said pupil, patient or inmate, or to any person upon whom the said patient, pupil, or inmate may be legally dependent, including both parents. (1925, c. 120, s. 5.)

When Action to Be Instituted. — An action under this section to recover for treatment and maintenance of an incompetent at a State hospital need not be instituted while the patient is receiving such treatment and maintenance, but may be brought after the patient has left the State hospital, the State not being relegated after the patient leaves the hospital to an action under § 143-126 against the patient's estate. State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

It would be a strained and limited construction of this section to hold that, once the patient is discharged from a State institution, a civil action for treatment and maintenance may not be instituted until after the patient's death. Such a construction would be improper and manifestly unjust to the State and the taxpayers. State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

Funds for Future Support Need Not Be Set Aside Prior to Recovery. — In an action under this section to recover for treatment and maintenance of an incompetent at a State hospital, it is not required that sufficient funds be set aside and retained by the incompetent for his future support and maintenance and for that of members of his family who are dependent upon him before the State is entitled to recovery. State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

Nonindigent Insane Persons Required to Pay Actual Costs. — There is no provision in the Constitution requiring or authorizing the General Assembly to provide for the care, treatment, or maintenance of nonindigent insane persons at the expense of the State. The General Assembly has at all times by appropriate statutes required such persons to pay at least the actual cost of their care, treatment, and maintenance, while they are patients in State institutions. State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

Applied in State ex rel. State Hosp. v. Security Nat'l Bank, 207 N.C. 697, 178 S.E. 487 (1935); State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

§ 143-122. No limitation of such action. — No statute of limitation shall apply to or constitute a defense to any cause of action asserted by any of the above-named institutions for the collection of the cost of care, treatment, training or maintenance, or any or all of these against any person liable therefor, as herein provided, and all statutes containing limitations which might apply to the same are hereby pro tanto repealed, as to all such causes of action or claims, and this section shall apply to all claims, and causes of action for like cost heretofore incurred with such institutions and now remaining unpaid. (1925, c. 120, s. 6.)

Applied in State ex rel. State Hosp. v. Security Nat'l Bank, 207 N.C. 697, 178 S.E. 487 (1935).

§ 143-123. Power of trustees to admit indigent persons. — This Article shall not be held or construed to interfere with or to limit the authority and power of the management of the boards of trustees or directors of any of the institutions named herein, to make provision for the care, custody, treatment and maintenance of all indigent persons who may be otherwise entitled to admission in any of the said institutions, and as to indigent pupils, inmates and patients, the same provisions now contained in the several statutes relating thereto shall continue in force, but if at any time any of the said indigent patients, pupils or inmates shall succeed to or inherit, or acquire, in any manner, property, or any of the persons named above as legally responsible for the cost of care, treatment and maintenance of the pupil, inmate and patient at the above-named institutions, shall acquire property, or shall otherwise be reputed to be solvent, then each of said institutions shall have the full right and authority to collect and sue for the entire cost and maintenance of such inmate, pupil or patient, without let or hindrance on account of any statute of limitation whatsoever. (1925, c. 120, s. 7.)

Applied in State ex rel. State Hosp. v. Security Nat'l Bank, 207 N.C. 697, 178 S.E. 487 (1935).

§ 143-124. Suit by Attorney General; venue. — At the request of such institution, all actions and suits shall be sued upon and prosecuted by the Attorney General, and such institution shall have the right to elect as to whether it will institute such action in the courts of Wake County or in the courts of the county in which such institution is located. (1925, c. 120, s. 8.)

§ 143-125. Judgment; never barred. — Any judgment obtained by the State for the use of any of the above-named institutions shall never be barred by any statute of limitation, but shall continue in force, and, at the request of the Attorney General or the superintendent of any of said institutions, an execution shall issue therefor at any time without requiring such institution to revive the said judgment, as is now provided by statute, but in case any judgment debtor, or any fiduciary responsible for the payment thereof, shall make affidavit and file the same with the clerk of the superior court from which such execution is issued, that payments have been made upon the said judgments, then the clerk shall recall said execution and proceed to hear and determine what is the true amount due thereon, if anything, in the same manner as is now required in motions to revive dormant judgments with the right of appeal to the judge of the superior court, as now provided in such motions, and the clerk of the superior court and the judge thereof shall have authority, in their discretion, to require security for the payment of the amount of said judgment pending such appeal. (1925, c. 120, s. 9.)

§ 143-126. Death of inmate; lien on estate. — (a) In the event of the death of any inmate, pupil or patient of either of said institutions above named, leaving any such cost of care, maintenance, training and treatment unpaid, in whole or in part, then such unpaid cost shall constitute a first lien on all the property, both real and personal, of the said decedent, subject only to the payment of funeral expenses and taxes to the State of North Carolina.

(b) Upon the death of a patient, the Department of Human Resources or their duly authorized agents shall file a statement containing the following:

(1) The name of the patient;
(2) The date of the patient's death;
(3) The inclusive dates of hospitalization;
(4) The name of the hospital or hospitals providing care; and
(5) The amount of the unpaid balance as evidenced by a certified statement of account. Such statement shall be filed in the office of the clerk of the superior court in the county of residence of the deceased patient and may be filed in the county or counties in which real property is located in which the deceased patient owns an interest. The statement shall be filed and indexed by the clerk.

(c) From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned in whole or in part by the deceased patient and lying in such county to the extent of the total amount of the unpaid balance for the patient's support and maintenance as evidenced by the certified statement of account. Payments made by a fiduciary including those made by a clerk of superior court, in full or partial satisfaction of such lien, shall constitute a valid expenditure as provided in G.S. 143-119.

(d) No action to enforce such lien may be brought more than three years from the date of death of the patient. The failure to bring such action or the failure of the Department or its duly authorized agents to file such statement shall not be a complete bar against recovery but shall only extinguish the lien and priority thereby established.

(e) Upon receipt of the unpaid balance by the State institution or Department or upon agreement of compromise of such unpaid balance, the Department of Human Resources or its duly authorized agents shall notify the clerks of superior court who shall have recorded the lien and shall indicate that such unpaid balance has been paid and the clerks shall cancel the lien of record. (1925, c. 120, s. 10; 1967, c. 960; 1973, c. 476, s. 133.)

Cross Reference. — See note to § 143-121.

Priority of Funeral Expenses Limited to $600. — See opinion of Attorney General to Elmanda S. Yates, Assistant Clerk, Superior Court, Davidson County, 42 N.C.A.G. 262 (1973).

Priority of Widow's and Child's Allowances. — See opinion of Attorney General to Elmanda S. Yates, Assistant Clerk, Superior Court, Davidson County, 42 N.C.A.G. 263 (1973).

Lien Created by This Section Does Not Have Priority Over Costs of Administration but Falls within the Fourth Class of Former § 28-105. — See opinion of Attorney General to Mr. Frankie Williams, Clerk of the Superior Court, Rockingham County, 43 N.C.A.G. 304 (1974).

§ 143-126.1. Lien on patient's property for unpaid balance due institution. — (a) There is hereby created a general lien, enforceable as hereinafter provided, on both the real and personal property of any person who is receiving or who has received care and maintenance in any of the State institutions listed in G.S. 143-117, to the extent of the total amount of the unpaid balance shown on the certified statement of account for charges from and after July 1, 1967.

(b) Such general lien for the unpaid balance for care and maintenance at the aforementioned hospitals shall apply alike to the property, both real and personal, of the patient whether held by the patient or a trustee or guardian of the patient.

(c) At a time deemed suitable in the discretion of the Department of Human Resources or its duly authorized agents, there may be filed a statement containing the following:

(1) The name of the patient;
(2) The inclusive dates of hospitalization and a statement that hospitalization is continuing if such is applicable;
(3) The name of the hospital or hospitals providing care; and
(4) The amount of the unpaid balance as evidenced by a certified statement of account.

Such statement may be filed in the office of the clerk of superior court in the county of residence of the patient and in each county or counties in which the patient owns an interest. The statement shall be filed and indexed by the clerk.

(d) From the time of filing, such statement shall be and constitute due notice of a lien against the real property then owned or thereafter acquired by the patient and lying in such county to the extent of the total amount of the unpaid balance for the patient's support and maintenance as evidenced by the certified statement of account for charges from and after July 1, 1967. Payments made by a fiduciary, including those made by a clerk of superior court, in full or partial satisfaction of such lien, shall constitute a valid expenditure as provided in G.S. 143-119.

(e) The lien thus established shall take priority over all other liens subsequently acquired and shall continue from the date of filing until satisfied. No action to enforce such lien may be brought more than three years from the last date of filing of such lien nor more than three years after the death of any patient. The failure to bring such action or the failure of the Department or its agents to file said statement shall not be a complete bar against recovery but shall only extinguish the lien and priority thereby established.

(f) Upon receipt of the full unpaid balance by the State institution or

Department of Human Resources or upon agreement of compromise of such unpaid balance, the Department of Human Resources or its duly authorized agents shall notify the clerks of superior court who have recorded a lien and shall indicate that such unpaid balance has been paid and the clerks shall cancel the lien of record. (1967, c. 959; 1973, c. 476, s. 133.)

Opinions of Attorney General. — Mr. Emmett L. Sellers, Director, Division of Medical Services, State Department of Social Services, 40 N.C.A.G. 689 (1969).

§ 143-127. Money paid into State treasury. — All money collected by any institution pursuant to this Article shall be by such institution paid into the State treasury, and shall be by the State Treasurer credited to the account of the institution collecting and turning the same into the treasury, and shall be paid out by warrants drawn by the Auditor as in cases of appropriations made for the maintenance of such institutions and shall be used by such institution as it uses and is authorized by law to use appropriations made for maintenance. (1925, c. 120, s. 11.)

Cited in State ex rel. Broughton Hosp. v. Hollifield, 4 N.C. App. 453, 167 S.E.2d 45 (1969).

§ 143-127.1. Parental liability for payment of cost of care for long-term patients in Department of Human Resources facilities. — (a) Notwithstanding the foregoing provisions of G.S. 143-117 through 143-127 inclusive, the natural or adoptive parents of persons who are long-term patients at facilities owned or operated by the Department of Human Resources shall only be liable on the charges made by such facility for treatment, care and maintenance for an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the Department of Human Resources.

(b) Parents or adoptive parents of a long-term patient in a facility owned or operated by the Department of Human Resources shall not be liable for any charges made by such facility for treatment, care and maintenance of such a patient incurred or accrued subsequent to such patient attaining age 18.

(c) For purposes of this section, the term "long-term patient" is defined as a person who has been a patient in a facility owned or operated by the Department of Human Resources for a continuous period in excess of 120 days. No absence of a patient from the facility due to a temporary or trial visit shall be counted as interrupting the accrual of the 120 days herein required to attain the status of a long-term patient. (1971, c. 218, s. 1; 1973, c. 476, s. 133; c. 775; 1975, c. 19, s. 48.)

Editor's Note. — The 1975 amendment corrected an error in the second 1973 amendatory act by substituting "of" for "on" following "status" near the end of subsection (c).

Session Laws 1971, c. 218, s. 4, as amended by Session Laws 1971, c. 1142, provides: "This act is intended to relieve and shall be construed to relieve, any parent of any liability for charges accrued prior to the ratification of this act for treatment, care and maintenance of a natural or adoptive child at facilities owned or operated by the State Department of Mental Health [now Department of Human Resources]. It is the intent of this act to limit the existing liability of all parents, in the manner set out in the previous sections of this act, in regard to charges made prior to the date of the ratification of this act, or to be made subsequent to such date, for treatment, care and maintenance of a natural or adopted child at facilities owned or operated by the State Department of Mental Health."

Applicability of Section to Accounts Past Due; Liability of Patient Not Restricted. — See opinion of Attorney General to Mr. Ben W. Aiken, General Business Manager, N.C. Department of Mental Health, 41 N.C.A.G. 507 (1971).

ARTICLE 8.

Public Building Contracts.

§ 143-128. Separate specifications for building contracts; responsible contractors. — Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county or municipality, when the entire cost of such work shall exceed fifty thousand dollars ($50,000) must have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

(1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or refrigeration for cold storage (where the cooling load is 15 tons or more of refrigeration), and all work kindred thereto.

(2) Plumbing and gas fittings and accessories, and all work kindred thereto.

(3) Electrical wiring and installations, and all work kindred thereto.

(4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the subdivisions or branches of work enumerated above. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications and awarding additional separate contracts for any other category of work when it is deemed in the best interest of such officer, board, department, commission or commissions to do so.

All contracts hereafter awarded by the State or by a county or municipality, or a department, board, commissioner, or officer thereof, for the erection, construction, alteration or repair of buildings, or any parts thereof, shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be performed in any single subdivision or branch is less than five thousand dollars ($5,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, the wording "separate contractor" is hereby deemed and held to mean any person, firm or corporation who shall enter into a contract with the State, or with any county or municipality, for the erection, construction, alteration or repair of any building or buildings, or parts thereof.

All public authorities coming within the requirements of this section shall have the authority to purchase and erect prefabricated or relocatable buildings or portions thereof without complying with the provisions hereof, except that portion of the work which must be performed at the construction site. (1925, c. 141, s. 2; 1929, c. 339, s. 2; 1931, c. 46; 1943, c. 387; 1945, c. 851; 1949, c. 1137, s. 1; 1963, c. 406, ss. 2-7; 1967, c. 860; 1973, c. 1419; 1977, c. 620.)

Local Modification. — Greene: 1953, c. 718.

Cross Reference. — As to application of this Article to lease of personal property with an option to purchase by a county, see § 153A-165.

Editor's Note. — The 1977 amendment rewrote the first, second and third paragraphs, inserted "or repair" near the end of the second sentence of the fourth paragraph, and made minor changes in wording in the last paragraph.

For comment on this section, see 4 N.C.L. Rev. 14.

Applicability of Section to Municipal Housing Authority. — Although housing authority was a municipal corporation organized for a special purpose, it was not a "municipality" subject to the provisions of this section requiring separate bids on different branches of work to be performed on contracts it let for construction of housing. Carolinas Chapter NECA, Inc. v. Housing Auth., 29 N.C. App. 755, 225 S.E.2d 653 (1976).

Separate Contracts Required of Counties in Certain Circumstances. — See opinion of Attorney General to Mr. William L. Mills, Jr., Cabarrus County Attorney, 40 N.C.A.G. 550 (1970).

Separate Specifications Required for Electrical, Plumbing and Heating Facilities. —A county or city may not let a bid for a contract for public building of modular unit type which has factory installed electrical, plumbing and heating facilities without having separate specifications drawn for such facilities so as to permit separate and independent bids on each class of work. Opinion of Attorney General to Mr. W.I. Thornton, Jr., Durham City Attorney, 42 N.C.A.G. 129 (1972).

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc. — No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ten thousand dollars ($10,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than two thousand five hundred dollars ($2,500), except in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein.

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a general misdemeanor.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body, said board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a surety bond or other deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

Any board or governing body of the State or of any institution of the State government or of any county, city, town, or other subdivision of the State may enter into any contract with (i) the United States of America or any agency thereof, or (ii) any other government unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of any other section of this Article.

The Secretary of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any officer or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2.)

Local Modification. — Bladen County Board of Education: 1973, c. 891; Forsyth: 1955, c. 94, s. 1; Greene: 1953, c. 718; Guilford: 1977, c. 277; Lee (board of education): 1953, c. 228; Mecklenberg: 1969, c. 279, 1973, c. 1158, repealing 1969, c. 279; city of Charlotte: 1967, c. 92; 1973, c. 1158, repealing 1967, c. 92; city of Durham: 1951, c. 506; 1969, cc. 428, 1233; 1973, c. 431; city of Gastonia: 1969, c. 328; city of Greensboro: 1949, c. 440; 1951, c. 707, ss. 1, 5; 1959, c. 1137, s. 14; 1969, c. 142; city of Henderson: 1953 c. 731, s. 33; city of Kernersville: 1955, c. 67; city of Wilmington: 1951, c. 881; city of Winston-Salem: 1951, c. 224; 1967, c. 805; 1973, c. 1185; town of Wrightsville Beach: 1955, c. 670, s. 1; Bessemer Sanitary District: 1953, c. 729, s. 1.

Editor's Note. — The 1975 amendment substituted "Secretary of Administration" for "Director of the Department of Administration" near the beginning of the last paragraph.

The 1977 amendment added the second sentence of the first paragraph and deleted "and upon failure to forthwith make payment the surety shall pay to the obligee an amount equal to double the amount of said bond" at the end of the second sentence of the seventh paragraph.

Session Laws 1959, c. 910, which rewrote the last two paragraphs of this section, provides: "Nothing in this act shall be construed to authorize the Division of Purchase and Contract of the Department of Administration to make any purchases for or on behalf of any county, city or town government in this State or any other political subdivision.

"The powers granted herein are in addition to and not in substitution for existing powers granted by general laws or special acts to cities and towns."

For a brief comment on the 1949 amendment, see 27 N.C.L. Rev. 423.

Opinions of Attorney General.—Mr. L.A. Stith, Craven County Attorney, 40 N.C.A.G. 459 (1969); Mr. James B. Garland, Gastonia City Attorney, 40 N.C.A.G. 460 (1969).

The purpose of this section is to prevent favoritism, corruption, fraud and imposition in the awarding of public contracts by giving notice to the prospective bidders and thus assuring competition, which in turn guarantees fair play and reasonable prices in contracts involving the expenditure of a substantial amount of public money. Mullen v. Town of Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945).

The requirements of this section are mandatory, and a contract made in contravention of such requirements is ultra vires and void. Raynor v. Commissioners for Town of Louisburg, 220 N.C. 348, 17 S.E.2d 495 (1941).

Public Laws 1903, c. 305, does not authorize the town of Louisburg to contract for machinery for its water and sewer system and electric light plant in a sum in excess of $1,000 without submitting the same to competitive bidding after due advertisement. Raynor v. Commissioners for Town of Louisburg, 220 N.C. 348, 17 S.E.2d 495 (1941).

Public policy has for many years required governmental needs to be supplied pursuant to contracts with low bidders ascertained by public advertisement. North Carolina has for many years so provided by this section. Douglas Aircraft Co. v. Electrical Workers Local 379, 247 N.C. 620, 101 S.E.2d 800 (1958).

This section applies only to contracts where the bidders have the right to name the price for which they are willing to furnish supplies and materials. It has no application whatever to a contract between a municipality and a public utility, where there can be no competition between bidders because the municipality or the State has the power and authority to fix the price of the service to be rendered or the commodity to be furnished. Mullen v. Town of Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945).

Emergency Defined. — The meaning of the word "emergency" within the exception to this section is not susceptible of precise definition and each case must, to some extent, stand upon its own bottom, but in any event the term connotes an immediate and present condition and not one which may or may not arise in the future or one that is apt to arise or may be expected to arise. Raynor v. Commissioners for Town of Louisburg, 220 N.C. 348, 17 S.E.2d 495 (1941).

Sales Tax Must Be Included as an "Estimated Expenditure of Public Money". —See opinion of Attorney General to Mr. James B. Garland, 41 N.C.A.G. 479 (1971).

The terms "apparatus," "materials" and "equipment," used in this section, denote particular types of tangible personal property and could not be construed to include electric current. Mullen v. Town of Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945).

The word "supplies" in the section is used in conjunction with the term "apparatus," "materials" and "equipment," and its meaning is confined to property of like kind and nature. Mullen v. Town of Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945).

Contract Made in Violation of This Section Is Void. — A contract involving more than $1,000 [now $2,500] let without advertisement as required by this section is void, and the contractor may not recover on it. Hawkins v. Town of Dallas, 229 N.C. 561, 50 S.E.2d 561 (1948).

Where plaintiffs laid water lines as a business investment pursuant to an agreement with the city's director of utilities that the city would reimburse them for the moneys so expended if the lines were incorporated within the city's limits, the contract was void. Styers v. City of Gastonia, 252 N.C. 572, 114 S.E.2d 348 (1960).

A purported public contract not made in conformity with the requirements of this section is void. Nello L. Teer Co. v. North Carolina State Hwy. Comm'n, 265 N.C. 1, 143 S.E.2d 247 (1965).

But Contractor May Recover on Quantum Meruit. — Where the work under the contract has been actually done and accepted, the county, city or town is bound on a quantum meruit for the reasonable and just value of the work and labor done and materials furnished. Hawkins v. Town of Dallas, 229 N.C. 561, 50 S.E.2d 561 (1948).

Performance and acceptance of construction work imposes an obligation to pay the reasonable and just value of the work done and materials furnished. Nello L. Teer Co. v. North Carolina State Hwy. Comm'n, 265 N.C. 1, 143 S.E.2d 247 (1965).

Such recovery excludes profits, and the reasonable and just value recoverable cannot exceed actual cost. Nello L. Teer Co. v. North Carolina State Hwy. Comm'n, 265 N.C. 1, 143 S.E.2d 247 (1965).

County May Accept Single Bid Filed Pursuant to Requirement of Statute. — See opinion of Attorney General to Mr. Elbert L. Peters, Coordinator, Governor's Highway Safety Program, 41 N.C.A.G. 527 (1971).

Necessity of Counties to Comply with Competitive Bidding Requirements in Lease Agreement of Equipment with Option to Purchase. — See opinion of Attorney General to Senator John J. Burney, Jr., 41 N.C.A.G. 504 (1971).

Modification of Bid after Opening of Sealed Bids Impermissible. — See opinion of Attorney General to Mr. John B. Lewis, Farmville Town Attorney, 41 N.C.A.G. 187 (1970).

Judicial Review of Finding of Emergency. —The provision of this section that a municipality may let a contract for expenditures in excess of $1,000 [now $2,500] without advertisement "in cases of special emergency" constitutes an exception to the general rule, and the commissioners of a municipality may not declare an emergency where none exists and thus defeat the law, nor is such finding by the municipal board upon competent evidence conclusive on the courts, but the courts may review the evidence and determine whether an emergency as contemplated by the statute does in fact exist. Raynor v. Commissioners for Town of Louisburg, 220 N.C. 348, 17 S.E.2d 495 (1941).

Applied in North Carolina Monroe Constr. Co. v. Guilford County Bd. of Educ., 278 N.C. 633, 180 S.E.2d 818 (1971).

Cited in Karpark Corp. v. Town of Graham, 99 F. Supp. 124 (M.D.N.C. 1951); Smith v. City of Rockingham, 268 N.C. 697, 151 S.E.2d 568 (1966); Wm. Muirhead Constr. Co. v. Housing Auth., 1 N.C. App. 181, 160 S.E.2d 542 (1968).

§ 143-129.1. Withdrawal of bid. — A public agency may allow a bidder submitting a bid pursuant to North Carolina G.S. 143-129 for construction or repair work to withdraw his bid from consideration after the bid opening without forfeiture of his bid security if the price bid was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn. A request to withdraw a bid must be made in writing to the public agency which invited the proposals for the work prior to the award of the contract, but not later than 72 hours after the opening of bids.

If a request to withdraw a bid has been made in accordance with the provisions of this section, action on the remaining bids shall be considered, in accordance with North Carolina G.S. 143-129, as though said bid had not been received. Notwithstanding the foregoing, such bid shall be deemed to have been received for the purpose of complying with the requirements of G.S. 143-132. Provided, however, in the event the work is relet for bids, under no circumstances shall the bidder who has filed a request to withdraw be permitted to rebid the work.

If a bidder files a request to withdraw his bid, the agency shall promptly hold a hearing thereon. The agency shall give to the withdrawing bidder reasonable notice of the time and place of any such hearing. The bidder, either in person or through counsel, may appear at the hearing and present any additional facts and arguments in support of his request to withdraw his bid. The agency shall issue a written ruling allowing or denying the request to withdraw within five days after the hearing. If the agency finds that the price bid was based upon a mistake of the type described in the first paragraph of this section, then the agency shall issue a ruling permitting the bidder to withdraw without forfeiture of the bidder's security. If the agency finds that the price bid was based upon a mistake not of the type described in the first paragraph of this section, then the agency shall issue a ruling denying the request to withdraw and requiring the forfeiture of the bidder's security. A denial by the agency of the request to withdraw a bid shall have the same effect as if an award had been made to the bidder and a refusal by the bidder to accept had been made, or as if there had been a refusal to enter into the contract, and the bidder's bid deposit or bid bond shall be forfeited.

In the event said ruling denies the request to withdraw the bid, the bidder shall have the right, within 20 days after receipt of said ruling, to contest the matter by the filing of a civil action in any court of competent jurisdiction of the State of North Carolina. The procedure shall be the same as in all civil actions except all issues of law and fact and every other issue shall be tried de novo by the judge without jury; provided that the matter may be referred in the instances and in the manner provided for by North Carolina G.S. 1A-1, Rule 53, as amended. Notwithstanding the foregoing, if the public agency involved is the Department of Administration, it may follow its normal rules and regulations with respect to contested matters, as opposed to following the administrative procedures set forth herein. If it is finally determined that the bidder did not have the right to withdraw his bid pursuant to the provisions of this section, the bidder's security shall be forfeited. Every bid bond or bid deposit given by a bidder to a public agency pursuant to G.S. 143-129 shall be conclusively presumed to have been given in accordance with this section, whether or not it be so drawn as to conform to this section. This section shall be conclusively presumed to have been written into every bid bond given pursuant to G.S. 143-129.

Neither the agency nor any elected or appointed official, employee, representative or agent of such agency shall incur any liability or surcharge, in the absence of fraud or collusion, by permitting the withdrawal of a bid pursuant to the provisions of this section.

No withdrawal of the bid which would result in the award of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has an interest shall be permitted. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or work agreement for, any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted, without the prior written approval of the agency. Whoever violates the provisions of the foregoing sentence shall be guilty of a misdemeanor. (1977, c. 617, s. 1.)

§ 143-130. Allowance for convict labor must be specified. — In cases where the board or governing body of a State agency or of any political subdivision of the State may furnish convict or other labor to the contractor, manufacturer, or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2; 1967, c. 860.)

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids. — All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of one thousand dollars ($1,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall be subject to public inspection at any time. (1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172; 1967, c. 860; 1971, c. 593.)

Local Modification. — Forsyth: 1955, c. 94, s. 2; city of Durham: 1951, c. 506; 1969, c. 1233; city of Greensboro: 1951, c. 707, s. 5; Guilford: 1977, c. 277; city of Henderson: 1953, c. 731, s. 33; city of Wilmington: 1951, c. 881; town of Wrightsville Beach: 1955, c. 670, s. 2; Bessemer Sanitary District: 1953, c. 729, s. 2.

§ 143-132. Minimum number of bids for public contracts. — No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

Provided, however, that any contract for construction or repairs requiring the estimated expenditure of public money in an amount in excess of ten thousand dollars ($10,000) but not in excess of thirty thousand dollars ($30,000) may be awarded by any board or governing body of the State or any subdivision thereof upon receipt of at least two such competitive bids without readvertising if such board or governing body finds as a fact that it would not be in the public interest to readvertise as above required and makes appropriate written entry in the minutes or records of such board or governing body. (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289; 1967, c. 860; 1977, c. 644.)

Local Modification. — Bertie and Northampton: 1953, c. 1257.

Editor's Note. — The 1977 amendment added the second paragraph.

Receipt of "No Bid" Notes Not a Bid within Requirement of Receipt of Certain Number of Bids. — See opinion of Attorney General to Mr. Thomas S. Harrington, Eden City Attorney, 40 N.C.A.G. 541 (1970).

§ 143-133. No evasion permitted. — No bill or contract shall be divided for the purpose of evading the provisions of this Article. (1933, c. 400, s. 3; 1967, c. 860.)

§ 143-134. Applicable to Department of Transportation and Department of Correction; exceptions. — This Article shall apply to the Department of Transportation and the Department of Correction except in the construction of roads, bridges and their approaches; provided however, that whenever the Director of the Budget determines that the repair or construction of a building by the Department of Transportation or by the Department of Correction can be done more economically through use of employees of the Department of Transportation and/or prison inmates than by letting such repair or building construction to contract, the provisions of this Article shall not apply to such repair or construction. (1933, c. 400, s. 3-A; 1955, c. 572; 1957, c. 65, s. 11; 1967, c. 860; c. 996, s. 13; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment substituted "Department of Transportation" for "Board of Transportation" in three places.

§ 143-134.1. Interest on final payments due to prime contractors. — On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except the construction of roads, highways, bridges and their approaches, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever occurs first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said prime contractor shall be paid interest, beginning on the 46th day, at the rate of six percent (6%) per annum on such unpaid balance as may be due. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply. (1959, c. 1328; 1967, c. 860.)

§ 143-135. Limitation of application of Article. — Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials, or equipment, this Article shall not apply to the State or to subdivisions of the State of North Carolina in the expenditure of public funds when the total cost of any repairs, completed project, building, or structure shall not exceed the sum of fifty thousand dollars ($50,000), if the repairs, completed project, building, or structure are performed or accomplished by or through duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned; provided, that such force account work shall be subject to the approval of the Secretary of Administration in the case of State agencies, or approval of the responsible commission, council or board in the case of subdivisions of the State. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6; 1967, c. 860; 1975, c. 292, ss. 1, 2; c. 879, s. 46.)

Local Modification. — Ashe: 1959, c. 627; Beaufort: 1955, c. 1136; Brunswick: 1961, c. 503; Franklin: 1957, c. 288; Halifax: 1957, c. 803; McDowell: 1959, c. 553; Mecklenburg: 1967, c. 298; 1973, c. 563; Pender: 1955, c. 187; city of Belmont: 1967, c. 419; city of Charlotte: 1973, c. 563; city of Gastonia: 1967, c. 392; city of Marion: 1959, c. 553.

Editor's Note. — The first 1975 amendment added "Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials, or equipment" at the beginning of the section and substituted "fifty thousand dollars ($50,000)" for "twenty-five thousand dollars ($25,000)" near the middle of the section.

The second 1975 amendment substituted "Secretary of Administration" for "Director of the Department of Administration" near the end of the section.

§ 143-135.1. State buildings exempt from county and municipal building requirements; consideration of recommendations by counties and municipalities. — Buildings constructed by the State of North Carolina or by any agency or institution of the State in accordance with plans and specifications approved by the Department of Administration shall not be subject to inspection by any county or municipal authorities and shall not be subject to county or municipal building codes and requirements. Inspection fees fixed by counties and municipalities shall not be applicable to such construction by the State of North Carolina. County and municipal authorities may inspect any plans or specifications upon their request to the Department of Administration, and any and all recommendations made by them shall be given consideration by the Department of Administration. Requests by county and municipal authorities to inspect plans and specifications for State projects shall be on the basis of a specific project. Should any agency or institution of the State require the services of county or municipal authorities, notice shall be given for the need of such services, and appropriate fees for such services shall be paid to the county or municipality; provided, however, that the application for such services to be rendered by any county or municipality shall have prior written approval of the Department of Administration. (1951, c. 1104, s. 4; 1967, c. 860; 1971, c. 563.)

§ 143-135.2. Contracts for restoration of historic buildings with private donations. — This Article shall not apply to building contracts let by a State agency for restoration of a historic building or structure where the funds for the restoration of such building or structure are provided entirely by funds donated from private sources. (1955, c. 27; 1967, c. 860.)

§ 143-135.3. Procedure for settling controversies arising from contracts; civil actions on disallowed claims. — Upon completion of any contract for construction or repair work awarded by any State board to any contractor, under the provisions of this Article, should the contractor fail to receive such settlement as he claims to be entitled to under terms of his contract, he may, within 60 days from the time of receiving written notice as to the disposition to be made of his claim, submit to the Secretary of Administration a written and verified claim for such amount as he deems himself entitled to under the terms of said contract, setting forth the facts upon which said claim is based. In addition, the claimant, either in person or through counsel, may appear before the Secretary of Administration and present any additional facts and arguments in support of his claim. Within 90 days from the receipt of the said written claim, the Secretary of Administration shall make an investigation of the claim and may allow all or any part or may deny said claim and shall have the authority to reach a compromise agreement with the contractor and shall notify the contractor in writing of his decision.

As to such portion of the claim which may be denied by the Secretary of Administration, the contractor may, within six months from receipt of the decision, institute a civil action for such sum as he claims to be entitled to under said contract by the filing of a verified complaint and issuance of summons in the Superior Court of Wake County or in the superior court of any county wherein the work under said contract was performed. The procedure shall be the same as in all civil actions except as herein and as hereinafter set out.

All issues of law and fact and every other issue shall be tried by the judge, without jury; provided that the matter may be referred in the instances and in the manner provided for in Article 20 of Chapter 1 of the General Statutes.

The submission of the claim to the Secretary of Administration within the time set out in this section and the filing of an action in the superior court within the time set out in this section shall be a condition precedent to bringing an action under this section and shall not be a statute of limitations.

The provisions of this section shall be deemed to enter into and form a part of every contract entered into between any board of the State and any contractor, and no provision in said contracts shall be valid that is in conflict herewith.

The word "board" as used in this section shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State. "A contract for construction or repair work," as used in this section, is defined as any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration enters into contracts.

"Contractor" as used in this section includes any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work. (1965, c. 1022; 1967, c. 860; 1969, c. 950, s. 1; 1973, c. 1423; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary of Administration" for "Director of the Department of Administration" throughout the section.

Chapter 1, Article 20, referred to in this section, was repealed by Session Laws 1967, c. 954, s. 4. See now Rule 53 of the Rules of Civil Procedure (§ 1A-1).

For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

Recovery of Settlement Limited to Terms of Contract. — Under the provisions of this section a party is only entitled to recover such settlement as he claims to be entitled to under terms of his contract. Nat Harrison Associates v. North Carolina State Ports Auth., 280 N.C. 251, 185 S.E.2d 793 (1972).

And Failure to Complete Obligation under Contract Terms Prohibits Relief. — Failure by a party to complete its obligation under the terms of its contracts prohibits that party from seeking the relief provided under this section. Nat Harrison Associates v. North Carolina State Ports Auth., 280 N.C. 251, 185 S.E.2d 793 (1972).

Dismissal of Contract Action. — A contract action against the State Ports Authority should have been dismissed where plaintiff had not completed a material part of its contract and had failed to comply with a contract requirement prior to filing a claim with the Director of the Department of Administration (now Secretary of Administration) and instituting the action in superior court. Nat Harrison Associates v. North Carolina State Ports Auth., 280 N.C. 251, 185 S.E.2d 793 (1972).

Summary Judgment in Favor of Ports Authority Proper. — Summary judgment was properly allowed in favor of the Ports Authority as to counts in which a plaintiff sought to recover for losses where there was no provision in the contracts for recovery of the claimed damages, since the plaintiff was entitled to recover under this section only under the terms of his contract. Nat Harrison Associates v. North Carolina State Ports Auth., 280 N.C. 251, 185 S.E.2d 793 (1972).

Stated in Wood-Hopkins Contracting Co. v. North Carolina State Ports Auth., 284 N.C. 732, 202 S.E.2d 473 (1974); Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

Cited in Wilmington Shipyard, Inc. v. North Carolina State Hwy. Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969).

§ 143-135.4. Authority of Department of Administration not repealed. — Nothing contained in this Article shall be construed as contravening or repealing any authorities given by statute to the Department of Administration. (1967, c. 860; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment deleted "Purchase and Contract Division of the" preceding "Department of Administration" at the end of the section.

ARTICLE 9.

Building Code Council and Building Code.

§ 143-136. Building Code Council created; membership. — (a) Creation; Membership; Terms. — There is hereby created a Building Code Council, which shall be composed of 11 members appointed by the Governor, consisting of one registered architect, one licensed general contractor, one registered architect or licensed general contractor specializing in residential design or construction, one registered engineer practicing structural engineering, one registered engineer practicing mechanical engineering, one registered engineer practicing electrical engineering, one licensed plumbing and heating contractor, one municipal or county building inspector, a representative of the public who is not a member of the building construction industry, a licensed electrical contractor, and a registered engineer on the engineering staff of a State agency charged with approval of plans of state-owned buildings. Of the members initially appointed by the Governor, three shall serve for terms of two years each, three shall serve for terms of four years each, and three shall serve for terms of six years each. Thereafter, all appointments shall be for terms of six years. The Governor may remove appointive members at any time. Neither the architect nor any of the above named engineers shall be engaged in the manufacture, promotion or sale of any building material, and any member who shall, during his term, cease to meet the qualifications for original appointment (through ceasing to be a practicing member of the profession indicated or otherwise) shall thereby forfeit his membership on the Council.

The Governor may make appointments to fill the unexpired portions of any terms vacated by reason of death, resignation, or removal from office. In making such appointment, he shall preserve the composition of the Council required above.

(b) Compensation. — Members of the Building Code Council other than any who are employees of the State shall receive seven dollars ($7.00) per day, including necessary time spent in traveling to and from their place of residence within the State to any place of meeting or while traveling on official business of the Council. In addition, all members shall receive mileage and subsistence according to State practice while going to and from any place of meeting, or when on official business of the Council. (1957, c. 1138; 1965, c. 1145; 1969, c. 1229, s. 1; 1971, c. 323.)

State Government Reorganization. — The Building Code Council was transferred to the Department of Insurance by § 143A-78, enacted by Session Laws 1971, c. 864.

Independent Judgment by Inspector in Interpretations Renders Section Useless. — If an inspector has the right under the Code to base his interpretations on independent judgment, this section, authorizing and establishing a Building Code Council empowered and directed to prepare and adopt a North Carolina State Building Code in accordance with legislative directives contained in this Article, is a completely useless piece of legislation. Lindstrom v. Chesnutt, 15 N.C. App. 15, 189 S.E.2d 749 (1972).

Violation of Building Code as to Materials or Type of Construction. — This section does not allow the building inspector to permit violations of the Building Code where the Code is specific as to the materials or type of construction required. Lindstrom v. Chesnutt, 15 N.C. App. 15, 189 S.E.2d 749 (1972).

Cited in Jenkins v. Leftwich Elec. Co., 254 N.C. 553, 119 S.E.2d 767 (1961).

§ 143-137. Organization of Council; rules and regulations; meetings; staff; fiscal affairs. — (a) First Meeting; Organization; Rules and Regulations. — Within 30 days after its appointment, the Building Code Council shall meet on call of the Commissioner of Insurance. The Council shall elect from its appointive members a chairman and such other officers as it may choose, for such terms as it may designate in its rules and regulations. The Council shall adopt such rules and regulations not inconsistent herewith as it may deem necessary for the proper discharge of its duties. The chairman may appoint members to such committees as the work of the Council may require.

(b) Meetings. — The Council shall meet regularly, at least once every six months, at places and dates to be determined by the Council. Special meetings may be called by the chairman on his own initiative and must be called by him at the request of two or more members of the Council. All members shall be notified by the chairman in writing of the time and place of regular and special meetings at least seven days in advance of such meeting. Five members shall constitute a quorum. All meetings shall be open to the public.

(c) Staff. — Personnel of the Division of Engineering of the Department of Insurance shall serve as a staff for the Council. Such staff shall have the duties of

(1) Keeping an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work performed by or for the Council, and making these records available for public inspection at all reasonable times;

(2) Handling correspondence for the Council.

(d) Fiscal Affairs of the Council. — All funds for the operations of the Council and its staff shall be appropriated to the Department of Insurance for the use of the Council. All such funds shall be held in a separate or special account on the books of the Department of Insurance, with a separate financial designation or code number to be assigned by the Department of Administration or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as the expenditure of any other Department of Insurance funds. The Department of Insurance may hire such additional personnel as may be necessary to handle the work of the Building Code Council, within the limits of funds appropriated for the Council and with the approval of the Council. (1957, c. 269, s. 1; c. 1138.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in the second sentence of subsection (d). See § 143-344(a).

§ 143-138. North Carolina State Building Code. — (a) Preparation and Adoption. — The Building Code Council is hereby empowered to prepare and adopt, in accordance with the provisions of this Article, a North Carolina State Building Code. Prior to the adoption of this Code, or any part thereof, the Council shall hold at least one public hearing in the City of Raleigh. A notice of such public hearing shall be given once a week for two successive calendar weeks in a newspaper published in Raleigh, said notice to be published the first time not less than 15 days prior to the date fixed for said hearing. The Council may hold such other public hearings and give such other notice as it may deem necessary.

(b) Contents of the Code. — The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; regulations governing construction and precautions to be taken during construction; regulations as to permissible materials, loads, and stresses; regulations of chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; regulations governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules and regulations pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State.

Provided further, that nothing in this Article shall be construed to make any building regulations applicable to farm buildings located outside the building-regulation jurisdiction of any municipality.

Provided further, that no building permit shall be required under such Code from any State agency for the construction of any building or structure, the total cost of which is less than twenty thousand dollars ($20,000), except public or institutional buildings.

For the information of users thereof, the Code shall include as appendices

(1) Any boiler regulations adopted by the Board of Boiler Rules,
(2) Any elevator regulations relating to safe operation adopted by the Commissioner of Labor, and
(3) Any regulations relating to sanitation adopted by the Department of Human Resources which the Building Code Council believes pertinent.

In addition, the Code may include references to such other regulations of special types, such as those of the Medical Care Commission and the Department of Public Instruction as may be useful to persons using the Code. No regulations issued by other agencies than the Building Code Council shall be construed as a part of the Code, nor supersede that Code, it being intended that they be presented with the Code for information only.

Nothing in this Article shall extend to or be construed as being applicable to the regulation of the design, construction, location, installation, or operation of (1) equipment for storing, handling, transporting, and utilizing liquefied petroleum gases for fuel purposes or anhydrous ammonia or other liquid fertilizers, or (2) equipment or facilities, other than buildings, of a public utility, as defined in G.S. 62-3, or an electric or telephone membership corporation, including without limitation poles, towers, and other structures supporting electric or communication lines.

(c) Standards to Be Followed in Adopting the Code. — All regulations contained in the North Carolina State Building Code shall have a reasonable and substantial connection with the public health, safety, morals, or general welfare, and their provisions shall be construed liberally to those ends. Requirements of the Code shall conform to good engineering practice, as evidenced generally by the requirements of the National Building Code of the American Insurance Association, formerly the National Board of Fire Underwriters, the Southern Standard Building Code of the Southern Building Code Congress, the Uniform Building Code of the Pacific Coast Building Officials Conference, the Basic Building Code of the Building Officials Conference of America, Inc., the National Electric Code, the Life Safety Code, formerly Building Exits Code of the National Fire Protection Association, the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, the Boiler Code of the American Society of Mechanical Engineers, Standards of the American Insurance Association for the Installation of Gas Piping and Gas Appliances in Buildings, and standards promulgated by the United States of America Standards Institute, formerly the American Standards Association, Underwriters' Laboratories, Inc., and similar national agencies engaged in research concerning strength of materials, safe design, and other factors bearing upon health and safety.

(d) Amendments of the Code. — The Building Code Council may from time to time revise and amend the North Carolina State Building Code, either on its own motion or upon application from any citizen, State agency, or political subdivision of the State. In adopting any amendment, the Council shall comply with the same procedural requirements and the same standards set forth above for adoption of the Code.

(e) Effect upon Local Building Codes. — The North Carolina State Building Code shall apply throughout the State, from the time of its adoption. However, any political subdivision of the State may adopt a building code or building rules and regulations governing construction within its jurisdiction. The territorial jurisdiction of any municipality or county for this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality; county jurisdiction shall include all other areas of the county. No such building code or regulations shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. While it remains effective, such approval shall be taken as conclusive evidence that a local code or local regulations supersede the State Building Code in its particular political subdivision. Whenever the Building Code Council adopts an amendment to the State Building Code, it shall consider any previously approved local regulations dealing with the same general matters, and it shall have authority to withdraw its approval of any such local code or regulations unless the local governing body makes such appropriate amendments to that local code or regulations as it may direct. In the absence of approval by the

Building Code Council, or in the event that approval is withdrawn, local codes and regulations shall have no force and effect.

(f) Effect upon Existing Laws. — Until such time as the North Carolina State Building Code has been legally adopted by the Building Code Council pursuant to this Article, the North Carolina Building Code adopted by the Council and the Commissioner of Insurance in 1953 shall remain in full force and effect. Such Code is hereby ratified and adopted.

(g) Publication and Distribution of Code. — The Building Code Council shall cause to be printed, after adoption by the Council, the North Carolina State Building Code and each amendment thereto. It shall, at the State's expense, distribute copies of the Code and each amendment to State and local governmental officials, departments, agencies, and educational institutions, as is set out in the table below. (Those marked by an asterisk will receive copies only on written request to the Council.)

OFFICIAL OR AGENCY	NUMBER OF COPIES
State Departments and Officials	
Governor	
Lieutenant Governor	1
Auditor	1
Treasurer	1
Secretary of State	1
Superintendent of Public Instruction	3
State Board of Education	2
Attorney General	5
Commissioner of Agriculture	1
Commissioner of Labor	3
Commissioner of Insurance	5
Department of Human Resources [Commission for Health Services]	10
Department of Human Resources [Commission for Medical Facility Services and Licensure]	3
Board of Transportation	3
Adjutant General	1
Utilities Commission	1
Department of Administration	3
Department of Conservation and Development	3
Department of Human Resources [Social Services Commission]	7
Justices of the Supreme Court	1 each
Clerk of the Supreme Court	1
Judges of the Court of Appeals	1 each
Clerk of the Court of Appeals	1
Judges of the Superior Court	* 1 each
Emergency Judges of the Superior Court	* 1 each
Special Judges of the Superior Court	* 1 each
Solicitors of the Superior Court	* 1 each
Department of Cultural Resources [State Library]	2
Supreme Court Library	2
State Senators	* 1 each
Representatives of General Assembly	* 1 each
Other state-supported institutions, at the discretion of the Council	* 1 each
Schools	
University of North Carolina at Chapel Hill	*25
North Carolina State University at Raleigh	*15
North Carolina Agricultural and Technical State University	* 5

OFFICIAL OR AGENCY	NUMBER OF COPIES
All other state-supported colleges and universities in the State of North Carolina	* 1 each
Local Officials	
Clerks of the Superior Courts	1 each
Registers of Deeds of the Counties	* 1 each
Chairman of the Boards of County Commissioners	* 1 each
City Clerk of each incorporated municipality	1 each
Chief Building Inspector of each incorporated municipality or county	* 1

In addition, the Building Code Council shall make additional copies available at such price as it shall deem reasonable to members of the general public.

(h) Violations. — Any person who shall be adjudged to have violated this Article or the North Carolina State Building Code shall be guilty of a misdemeanor and shall upon conviction be liable to a fine, not to exceed fifty dollars ($50.00), for each offense. Each 30 days that such violation continues shall constitute a separate and distinct offense. In case any building or structure is erected, constructed or reconstructed, or its purpose altered, so that it becomes in violation of the North Carolina State Building Code, either the local enforcement officer or the State Commissioner of Insurance or other State official with responsibility under G.S. 143-139 may, in addition to other remedies, institute any appropriate action or proceedings (i) to prevent such unlawful erection, construction or reconstruction, or alteration of purpose, (ii) to restrain, correct, or abate such violation, or (iii) to prevent the occupancy or use of said building, structure, or land until such violation is corrected. (1957, c. 1138; 1969, c. 567; c. 1229, ss. 2-6; 1971, c. 1100, ss. 1, 2; 1973, c. 476, ss. 84, 128, 138, 152; c. 507, s. 5.)

Editor's Note. — Session Laws 1971, c. 1100, s. 3, provides: "Provided that nothing in this act shall in any way apply to any type of farm building."

By virtue of Session Laws 1943, c. 170, "State Commissioner of Insurance" has been substituted for "State Insurance Commissioner" in subsection (h).

Opinions of Attorney General. — Mr. F.E. Wallace, Jr., Kinston City Attorney, 40 N.C.A.G. 458 (1969).

Legislative Intent. — There is a legislative intent to provide a complete and integrated regulatory scheme, including regulations as to the installation of sprinkler systems, in all buildings and structures, wherever situate in North Carolina, except as expressly exempted by statute. Greene v. City of Winston-Salem, 287 N.C. 66, 213 S.E.2d 231 (1975).

History. — See Lutz Indus., Inc. v. Dixie Home Stores, 242 N.C. 332, 88 S.E.2d 333 (1955); Pinnix v. Toomey, 242 N.C. 358, 87 S.E.2d 893 (1955); Jenkins v. Leftwich Elec. Co., 254 N.C. 553, 119 S.E.2d 767 (1961).

Police Power Authorizes Establishment of Standards for Buildings. — It is within the police power of the General Assembly and of a city, when authorized, to establish minimum standards, materials, designs, and construction of buildings for the safety of the occupants, their neighbors, and the public at large. State v. Walker, 265 N.C. 482, 144 S.E.2d 419 (1965);Walker v. City of Charlotte, 276 N.C. 166, 171 S.E.2d 431 (1970).

For the purpose of protecting life, health, safety and welfare, the General Assembly has power to promulgate rules, fix minimum standards, prescribe materials and designs for buildings and other structures so long as they are not arbitrary, capricious or unreasonable and so long as they tend to promote health, safety and welfare. In these matters, property rights must yield to the proper exercise of the police power. Walker v. City of Charlotte, 276 N.C. 166, 171 S.E.2d 431 (1970).

Building Code Has Force of Law. — The 1936 North Carolina Building Code has the force of law. In re O'Neal, 243 N.C. 714, 92 S.E.2d 189 (1956); Lindstrom v. Chesnutt, 15 N.C. App. 15, 189 S.E.2d 749 (1972).

By virtue of subsection (f) of this section, on July 13, 1957, the North Carolina Building Code of 1953 had the force of law. Drum v. Bisaner, 252 N.C. 305, 113 S.E.2d 560 (1960).

The Supreme Court will take judicial notice of the Building Code adopted, promulgated and published by the Building Code Council. Lutz Indus., Inc. v. Dixie Home Stores, 242 N.C. 332, 88 S.E.2d 333 (1955).

A violation of the Building Code is negligence per se. Lindstrom v. Chesnutt, 15 N.C. App. 15, 189 S.E.2d 749 (1972).

Violation of Building Code as to Materials or Type of Construction. — This section does not allow the building inspector to permit violations of the Building Code where the Code is specific as to the materials or type of construction required. Lindstrom v. Chesnutt, 15 N.C. App. 15, 189 S.E.2d 749 (1972).

Building Code Provisions Referred to in Complaint for Negligent Construction. — See Pinnix v. Toomey, 242 N.C. 358, 87 S.E.2d 893 (1955).

National Electrical Code as Statutory Standard of Care. — See Lutz Indus., Inc. v. Dixie Home Stores, 242 N.C. 332, 88 S.E.2d 333 (1955); Ward v. Thompson Heights Swimming Club, Inc., 27 N.C. App. 218, 219 S.E.2d 73 (1975).

National Electrical Code Has Force of Law. — On 10 November 1959, the National Electrical Code, as approved by the American Standards Association on 5 August 1959, and which Code is filed in the office of the Secretary of State of North Carolina, by virtue of this section has the force and effect of law in North Carolina. Jenkins v. Leftwich Elec. Co., 254 N.C. 553, 119 S.E.2d 767 (1961).

The National Electrical Code, as approved and adopted by the State Building Code Council and on file with the Secretary of State, has the force and effect of law. Jenkins v. Starrett Corp., 13 N.C. App. 437, 186 S.E.2d 198 (1972).

The National Electrical Code has the force and effect of law and criminal sanctions are provided for its violation. Ward v. Thompson Heights Swimming Club, Inc., 27 N.C. App. 218, 219 S.E.2d 73 (1975).

And Violation Thereof Is Negligence Per Se. — Violations of the National Electrical Code, authorized by this section, are negligence per se. Jenkins v. Leftwich Elec. Co., 254 N.C. 553, 119 S.E.2d 767 (1961); Jenkins v. Starrett Corp., 13 N.C. App. 437, 186 S.E.2d 198 (1972); Ward v. Thompson Heights Swimming Club, Inc., 27 N.C. App. 218, 219 S.E.2d 73 (1975).

Since article 300, sections 3008-3009, of the National Electrical Code has the force and effect of a statute, the failure to use a box or terminal fitting or bushing where the conductors left the electrical metal tubing on a kitchen exhaust fan was negligence per se. Drum v. Bisaner, 252 N.C. 305, 113 S.E.2d 560 (1960).

But Neither Code Precisely Defines Class of Persons to Which Applicable. — Neither the State Building Code nor the National Electrical Code precisely defines the class of persons to which they are applicable. Jenkins v. Starrett Corp., 13 N.C. App. 437, 186 S.E.2d 198 (1972).

National Electrical Code Not Restricted to Fixtures to Real Property. — The State Building Code does not restrict the application of the National Electrical Code to fixtures to real property. Jenkins v. Starrett Corp., 13 N.C. App. 437, 186 S.E.2d 198 (1972).

Applicability of Grounding Provisions of National Electrical Code. — The provisions of the National Electrical Code relating to equipment grounding were held applicable to the owner of an outdoor ice merchandiser installed to sell ice to the public. Jenkins v. Starrett Corp., 13 N.C. App. 437, 186 S.E.2d 198 (1972).

Unattended Gasoline Pumps Not within Regulation of State Building Code. — See opinion of Attorney General to Mr. Thomas B. Griffin, 41 N.C.A.G. 282 (1971).

City Ordinance Requiring Sprinkler Systems. — An interpretation of § 160A-174 to allow a city ordinance requiring sprinkler systems, thus empowering a city to ignore explicit statewide legislative enactments, would, in effect, permit a city to amend the North Carolina Building Code by the simple expedient of codifying a contested ordinance as a part of its Fire Prevention Code and thereby to evade the clear requirements of subsection (e). Greene v. City of Winston-Salem, 287 N.C. 66, 213 S.E.2d 231 (1975).

Applied in Swaney v. Peden Steel Co., 259 N.C. 531, 131 S.E.2d 601 (1963); Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

§ 143-139. Enforcement of Building Code. — (a) Procedural Requirements. —Subject to the provisions set forth herein, the Building Code Council shall adopt such procedural requirements in the North Carolina State Building Code as shall appear reasonably necessary for adequate enforcement of the Code while safeguarding the rights of persons subject to the Code.

(b) General Building Regulations. — The Insurance Commissioner shall have general supervision, through the Division of Engineering of the Department of Insurance, of the administration and enforcement of all sections of the North Carolina State Building Code pertaining to plumbing, electrical systems, general building restrictions and regulations, heating and air conditioning, fire protection, and the construction of buildings generally, except those sections of the Code, the enforcement of which is specifically allocated to other agencies by subsections (c) and (d) below. The Insurance Commissioner, by means of the Division of Engineering, shall exercise his duties in the enforcement of the North Carolina State Building Code (including local building codes which have superseded the State Building Code in a particular political subdivision pursuant to G.S. 143-138(e)) in cooperation with local officials and local inspectors duly appointed by the governing body of any municipality or board of county commissioners pursuant to Article 11, Chapter 160 of the General Statutes of North Carolina, or G.S. 160-200(29), or G.S. 153-9(47) and (52), or any other applicable statutory authority.

(c) Boilers. — The Bureau of Boiler Inspection of the Department of Labor shall have general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to boilers of the types enumerated in Article 7 of Chapter 95 of the General Statutes.

(d) Elevators. — The Department of Labor shall have general supervision of the administration and enforcement of those sections of the North Carolina State Building Code which pertain to elevators, moving stairways, and amusement devices such as merry-go-rounds, roller coasters, Ferris wheels, etc. (1957, c. 1138; 1963, c. 811.)

Editor's Note. — Article 11, Chapter 160, referred to in this section, was repealed by Session Laws 1969, c. 1065, s. 1, and Session Laws 1971, c. 698, s. 2. See now §§ 160A-411 through 160A-438, 160A-441 through 160A-450. Section 160-200(29) was repealed by Session Laws 1971, c. 698, s. 2. Section 153-9(47) and (52) were repealed by Session Laws 1973, c. 822. See now §§ 153A-350 through 153A-375.

Legislative Intent. — The legislative intention to create a complete and integrated regulatory scheme is evidenced by the language of subsection (b), which delegates to the Commissioner of Insurance the responsibility of administering and enforcing the provisions of the North Carolina Building Code. Greene v. City of Winston-Salem, 287 N.C. 66, 213 S.E.2d 231 (1975).

§ 143-139.1. Certification of manufactured buildings, structures or components by recognized independent testing laboratory. — The State Building Code may provide, in circumstances deemed appropriate by the Building Code Council, for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory having follow-up inspection services approved by the Building Code Council. Approval of such buildings, structures or components shall be evidenced by labels or seals acceptable to the Council. All building units, structures or components bearing such labels or seals shall be deemed to meet the requirements of the State Building Code and this Article without further inspection or payment of fees, except as may be required for the enforcement of the Code relative to the connection of units and components and enforcement of local ordinances governing zoning, utility connections, and foundations permits. The Building Code Council shall adopt and may amend from time to time such reasonable and appropriate rules and regulations as it deems necessary for approval of agencies offering such testing, evaluation, inspection, and certification services and for overseeing their operations. Such rules and regulations shall include provisions to insure that such agencies are independent and free of any potential conflicts of interest which might influence their judgment in exercising their functions under the Code. Such rules and regulations may include a schedule of reasonable fees to cover administrative expenses in approving and overseeing operations of such agencies and may require the posting of a bond or other security satisfactory to the Council guaranteeing faithful performance of duties under the Code. (1971, c. 1099.)

§ 143-139.2. Enforcement of insulation requirements; certificate for occupancy; no electric service without compliance. — (a) In addition to other enforcement provisions set forth in this Chapter, no single family or multi-unit residential building on which construction is begun in North Carolina on or after January 1, 1978, shall be occupied until it has been certified as being in compliance with the minimum insulation standards for residential construction, as prescribed in the North Carolina State Building Code or as approved by the Building Code Council as provided in G.S. 143-138(e). It shall be the duty of each county government and each municipality to provide for a building inspection program for certification of compliance with this section, either through a person in the county, city or joint inspection department who is responsible for enforcement of the insulation and energy utilization standards of the State Building Code or in any county or city which does not have an inspection department, through a person designated as the energy and insulation inspector.

(b) No public supplier of electric service, including regulated public utilities, municipal electric service and electric membership corporations, shall connect for electric service to an occupant any residential building on which construction is begun on or after January 1, 1978, unless said building complies with the insulation requirements of the North Carolina State Building Code or of local building codes approved by the Building Codes Council as provided in G.S. 143-138(e), and has been certified for occupancy in compliance with the minimum insulation standards of the North Carolina State Building Code or of any local modification approved as provided in G.S. 143-138(e), by a person designated as an inspector pursuant to subsection (a) of this section. (1977, c. 792, s. 7.)

Editor's Note. — For statement of policy relative to Session Laws 1977, c. 792, see Session Laws 1977, c. 792, s. 2.

Session Laws 1977, c. 792, s. 10, contains a severability clause.

§ 143-140. Hearings before enforcement agencies as to questions under Building Code. — Any person desiring to raise any question under this Article or under the North Carolina State Building Code shall be entitled to a full hearing before the appropriate enforcement agency, as designated in the preceding section. Upon request in writing by any such person, the enforcement agency shall appoint a time for the hearing, giving such person reasonable notice thereof. The enforcement agency, through an appropriate official, shall conduct a full and complete hearing of the matters in controversy and make a determination thereof within a reasonable time thereafter. The person requesting the hearing shall, upon request, be furnished a written statement of the decision, setting forth the facts found, the decision reached, and the reasons therefor. In the event of dissatisfaction with such decision, the person affected shall have the options of

(1) Appealing to the Building Code Council or
(2) Appealing directly to the superior court, as provided in G.S. 143-141. (1957, c. 1138.)

§ 143-141. Appeals to Building Code Council. — (a) Method of Appeal. — Whenever any person desires to take an appeal to the Building Code Council from the decision of a State enforcement agency relating to any matter under this Article or under the North Carolina State Building Code, he shall within 30 days after such decision give written notice to the Building Code Council through the Division of Engineering of the Department of Insurance that he desires to take an appeal. A copy of such notice shall be filed at the same time with the enforcement agency from which the appeal is taken. The chairman of the Building Code Council shall fix a reasonable time and place for a hearing, giving reasonable notice to the appellant and to the enforcement agency. Such hearing shall be not later than the next regular meeting of the Council. The Building Code Council shall thereupon conduct a full and complete hearing as to the matters in controversy, after which it shall within a reasonable time give a written decision setting forth its findings of fact and its conclusions.

(b) Interpretations of the Code. — The Building Code Council shall have the duty, in hearing appeals, to give interpretations of such provisions of the

Building Code as shall be pertinent to the matter at issue. Where the Council finds that an enforcement agency was in error in its interpretation of the Code, it shall remand the case to the agency with instructions to take such action as it directs.

(c) Variations of the Code. — Where the Building Code Council finds on appeal that materials or methods of construction proposed to be used are as good as those required by the Code, it shall remand the case to the enforcement agency with instructions to permit the use of such materials or methods of construction. The Council shall thereupon immediately initiate procedures for amending the Code as necessary to permit the use of such materials or methods of construction.

(d) Further Appeals to the Courts. — Whenever any person desires to take an appeal from a decision of the Building Code Council or from the decision of an enforcement agency (with or without an appeal to the Building Code Council), he may take an appeal either to the Wake County Superior Court or to the superior court of the county in which the proposed building is to be situated, in accordance with the provisions of Article 33 of Chapter 143 of the General Statutes. (1957, c. 1138.)

§ 143-142. Further duties of the Building Code Council. — (a) Recommended Statutory Changes. — It shall be the duty of the Building Code Council to make a thorough study of the building laws of the State, including both the statutes enacted by the General Assembly and the rules and regulations adopted by State and local agencies. On the basis of such study, the Council shall recommend to the 1959 and subsequent General Assemblies desirable statutory changes to simplify and improve such laws.

(b) Recommend Changes in Enforcement Procedures. — It shall be the duty of the Building Code Council to make a thorough and continuing study of the manner in which the building laws of the State are enforced by State, local, and private agencies. On the basis of such studies, the Council may recommend to the General Assembly any statutory changes necessary to improve and simplify the enforcement machinery. The Council may also advise State agencies as to any changes in administrative practices which could be made to improve the enforcement of building laws without statutory changes. (1957, c. 1138.)

§ 143-143. Effect on certain existing laws. — Nothing in this Article shall be construed as abrogating or otherwise affecting the power of any State department or agency to promulgate regulations, make inspections, or approve plans in accordance with any other applicable provisions of law not in conflict with the provisions herein. (1957, c. 1138.)

§ 143-143.1: Repealed by Session Laws 1971, c. 882, s. 1.

§ 143.143.2. Electric wiring of houses. — The electric wiring of houses or buildings for lighting or for other purposes shall conform to the requirements of the State Building Code, which includes the National Electric Code and any amendments and supplements thereto as adopted and approved by the State Building Code Council, and any other applicable State and local laws. In order to protect the property of citizens from the dangers incident to defective electric wiring of buildings, it shall be unlawful for any firm or corporation to allow any electric current for use in any newly erected building to be turned on without first having had an inspection made of the wiring by the appropriate official electrical inspector or inspection department and having received from that inspector or department a certificate approving the wiring of such building. It shall be unlawful for any person, firm, or corporation engaged in the business of selling electricity to furnish initially any electric current for use in any building, unless said building shall have first been inspected by the appropriate official electrical inspector or inspection department and a certificate given as above provided. In the event that there is no legally appointed inspector or inspection department with jurisdiction over the property involved, the two preceding sentences shall have no force or effect. (1905, c. 506, s. 23; Rev., s. 3001; C. S., s. 2763; 1969, c. 1229, s. 7.)

ARTICLE 9A.

Uniform Standards Code for Mobile Homes.

§ 143-144. Short title. — This Article shall be known and may be cited as "The Uniform Standards Code for Mobile Homes Act." (1969, c. 961, s. 1.)

Editor's Note. — Former §§ 143-144 to 143-151 were repealed by Session Laws 1959, c. 683, s. 6.

§ 143-145. Definitions. — Unless clearly indicated otherwise by context, the following words when used in this Article, for the purpose of this Article, shall have the meanings respectively ascribed to them in this section:

(1) "Certificate of compliance" means a certificate issued by an inspection department approved and licensed by the Council as being competent which certificate shall be valid only within the jurisdiction of the inspection department and on which certificate shall be recorded:
  a. The inspection department issuing such certificate;
  b. The date of issue;
  c. The serial or other identification number of such mobile home and the name of the manufacturer;
  d. A certification that such mobile home was on the day of inspection so opened that its entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;
  e. A certification that said mobile home complies in full with the standards and rules and regulations prescribed in this Article.

(2) "Commissioner" means the Commissioner of Insurance of the State of North Carolina.

(3) "Competent" shall mean competent to technically evaluate, test, and inspect in accordance with the standards, rules and regulations prescribed in this Article: the structural features, the plumbing, heating, electrical and air-conditioning systems and the materials used in the construction of a mobile home.

(4) "Council" means the North Carolina State Building Code Council.

(5) "Inspection department" means a North Carolina city or county building inspection department authorized by Chapter 160 or Chapter 153 of the General Statutes.

(6) "Label of compliance" shall mean a permanent label or seal permanently attached to a mobile home at completion of construction thereof which is issued by any independent, solvent, and trustworthy person approved and licensed by the Council as being competent and as having and utilizing initial and follow-up manufacturing inspection services which provide the highest degree of quality control, and on which seal or label shall be recorded:
  a. The person issuing such label or seal and the serial number of the label or seal;
  b. The serial or other identification number of said mobile home;
  c. A certification that said mobile home was evaluated, tested, and inspected in accordance with the standards and rules and regulations prescribed in this Article.

(7) "Mobile home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. As used in this Article, "mobile home" also means a double-wide mobile home which is two or more portable manufactured housing units designed for transportation on their own chassis, which connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

(8) "Person" means any corporation, partnership, association, voluntary organization or governmental agency of the United States or any state therein and does not mean an individual natural person. (1969, c. 961, s. 2; 1971, c. 1172, s. 1.)

Editor's Note. — Chapter 153 of the General Statutes was repealed by Session Laws 1973, c. 822. See now Chapter 153A. Chapter 160 of the General Statutes has also been in large part repealed. See now Chapter 160A.

§ 143-146. Statement of policy; rule-making power. — (a) Mobile homes, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of mobile homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this State to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new mobile homes, which are not so constructed as to provide reasonable safety and protection to their owners and users.

(b) The Commissioner is authorized and empowered to make and promulgate rules and regulations embodying the fundamental principles adopted, recommended, or issued as ANSI A119.1 and amended from time to time by the American National Standards Institute (ANSI), successor to the American Standards Association (ASA) applicable to mobile homes as defined herein.

(c) The Council is authorized to make and promulgate reasonable rules and regulations governing the procedure to be followed by a person or inspection department seeking to obtain a license pursuant to the provisions of this Article which shall provide opportunity for hearing before the Council on such application.

(d) In order to insure the highest degree of quality control in the manufacture of mobile homes, the Council is further authorized and empowered to make and promulgate reasonable rules and regulations governing the initial and follow-up manufacturing inspection practices and procedures to be performed by any person granted a license to issue a label of compliance pursuant to this Article. In order to assure uniformity in standards and enforcement, such rules and regulations may also provide that any such licensee and its operations may be inspected from time to time by any other person or licensee designated by the Council who shall report the results of such examination to the Council. In such case the reasonable expense incurred by the examiner in making such inspection shall be borne by the licensee whose operations were examined. (1969, c. 961, s. 3; 1971, c. 1172, s. 2.)

§ 143-147. Approval and licensing of persons and inspection departments. — (a) Any qualified person may make application to the Council for approval for license to issue labels of compliance. Any inspection department may make application to the Council for approval for issuing certificates of compliance. The Council after notice and hearing, if satisfied that such person or inspection department meets the qualifications prescribed in this Article, shall cause a license to be issued which license shall be valid for a consecutive period of 12 months and may be renewed for like consecutive periods on application to and approval by the Council;

(b) Any such license issued to a person other than an inspection department may be suspended or revoked after notice and hearing if such person:

(1) Is either insolvent, not competent, not independent, or untrustworthy;
(2) Has made false statements in his application to the Council for license;
(3) Fails or neglects to perform evaluations, testing, or manufacturing inspections in accordance with its proposed plans and procedures submitted to the Council or fails to comply with any applicable rules and regulations promulgated by the Council pursuant to G.S. 143-146(d);
(4) Has repeatedly, specifically or by implication authorized the attachment of its label of compliance to mobile homes and such mobile homes did not meet the standards and rules and regulations provided by this Article at the time said labels were attached.

(c) Any such license issued to an inspection department may be suspended or revoked after notice and hearing if such department:

(1) Is not competent;
(2) Has issued a certificate of compliance on a mobile home when such mobile home was not opened for inspection so that the entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;
(3) Has issued a certificate of compliance on a mobile home and such mobile home did not at the time of inspection meet the standards and rules and regulations provided by this Article. (1969, c. 961, s. 4; 1971, c. 1172, s. 3.)

§ 143-148. Compliance with the Commissioner's rules. — (a) No individual natural person, firm, partnership, association or corporation may manufacture, sell, or offer for sale any mobile home in this State which has been constructed after July 1, 1970, unless such mobile home, its components, systems, and appliances have been constructed and assembled in accordance with the standards herein defined.

(b) Any mobile home which bears a label or seal of compliance of a person licensed and approved by the Council shall be deemed to be in full compliance with the standards and rules and regulations prescribed in this Article. (1969, c. 961, s. 5; 1971, c. 1172, s. 4.)

§ 143-149. Necessity for obtaining label or certificate for purposes of sale. — No individual natural person, firm, partnership, association or corporation shall after September 1, 1971, sell or offer for sale any mobile home in this State, which mobile home does not bear permanently attached thereto a label of compliance or for which mobile home the individual natural person, firm, partnership, association, or corporation selling or offering to sell such mobile home does not have a certificate of compliance; provided it shall be a defense to any prosecution for a violation of the provisions of this section if such individual natural person, firm, partnership, association or corporation shall show that a certificate of title for such mobile home as required by G.S. 20-52 was obtained prior to September 1, 1971, or produces other satisfactory evidence on file with the North Carolina Department of Motor Vehicles that such mobile home was manufactured prior to September 1, 1971. (1971, c. 1172, s. 5.)

§ 143-150. No electricity to be furnished units not in compliance. — It shall be unlawful for any individual natural person, partnership, firm or corporation to allow any electric current for use in any mobile home to be turned on or to continue to furnish electricity for use in such mobile home without having first ascertained that either a label of compliance is permanently attached to said mobile home or a certificate of compliance has been issued for such mobile home, provided this section shall not apply if electricity to such mobile home had been turned on or furnished prior to September 1, 1971, by said firm or corporation or if the owner of said mobile home shall have obtained a certificate of title for said mobile home as required by G.S. 20-52 prior to September 1, 1971, or his predecessor in title shall have obtained such certificate prior to September 1, 1971, or the owner furnishes other satisfactory evidence on file with the North Carolina Department of Motor Vehicles that said mobile home was manufactured prior to September 1, 1971. (1971, c. 1172, s. 6.)

§ 143-151. Penalties. — Any individual natural person, partnership, firm, association or corporation who shall be adjudged to have violated the provisions of G.S. 143-148(a), G.S. 143-149, or G.S. 143-150 shall be guilty of a misdemeanor and shall upon conviction be liable to a fine not to exceed five hundred dollars ($500.00) for each offense. (1971, c. 1172, s. 7.)

§ 143-151.1. Enforcement. — The Commissioner of Insurance or any inspection department may initiate any appropriate action or proceeding to prevent, restrain, or correct any violation of this Article. (1971, c. 1172, s. 8.)

§ 143-151.2: Recodified as § 143-151.42.

§§ 143-151.3 to 143-151.7: Reserved for future codification purposes.

ARTICLE 9B.

North Carolina Code Officials Qualification Board.

§ 143-151.8. Definitions. — (a) As used in this Article, unless the context otherwise requires:

(1) "Board" means the North Carolina Code Officials Qualification Board.
(2) "Code" means the North Carolina State Building Code and related local building rules and regulations approved by the Building Code Council heretofore or hereinafter enacted, adopted or approved pursuant to G.S. 143-138.
(3) "Code enforcement" means the examination and approval of plans and specifications, or the inspection of the manner of construction, workmanship, and materials for construction of buildings and structures and components thereof as an employee of the State or local government, except an employee of the State Department of Labor engaged in the administration and enforcement of those sections of the Code which pertain to boilers and elevators, to assure compliance with the State Building Code and related local building rules and regulations.
(4) "Local inspection department" means the agency or agencies of local government with authority to make inspections of buildings and to enforce the Code and other laws, ordinances, and regulations enacted by the State and the local government which establish standards and requirements applicable to the construction, alteration, repair, or demolition of buildings.
(5) "Qualified Code-enforcement official" means a person qualified under this Article to engage in the practice of Code enforcement.

(b) For purposes of this Article, the population of a city or county shall be determined according to the most current federal census, unless otherwise specified. (1977, c. 531, s. 1.)

Editor's Note. — Session Laws 1977, c. 531, s. 7, provides: "The provisions of this act shall not be applicable to municipalities of less than 25,000 population or to counties of less than 75,000 population according to the 1970 U.S. Census, and shall not be applicable to any officials or employees of any such municipality or county unless the Legislative Research Commission makes affirmative findings of fact that as of July 1, 1984, there exist within the State adequate in-service and pre-service training opportunities to permit employees or prospective employees of such municipalities and counties to secure at various convenient places throughout the State or by correspondence courses the training necessary to retain limited certificates or to secure standard certificates, and to provide an adequate pool of qualified personnel to enforce applicable codes in such municipalities or counties. Unless the Legislative Research Commission shall make such affirmative findings of fact, then neither the North Carolina Code Officials Qualification Board nor the North Carolina Building Code Council nor the Commissioner of Insurance nor the Department of Insurance shall enforce any provision of this act as to any municipality of less than 25,000 population or any county of less than 75,000 population according to the 1970 U.S. Census or as to any official or employee of any such municipality or county."

§ 143-151.9. North Carolina Code Officials Qualification Board established; members; terms; vacancies. — (a) There is hereby established the North Carolina Code Officials Qualification Board in the Department of Insurance. The Board shall be composed of 20 members appointed as follows:

(1) One member who is a city or county manager;

(2) Two members, one of whom is an elected official representing a city over 5,000 population and one of whom is an elected official representing a city under 5,000 population;

(3) Two members, one of whom is an elected official representing a county over 40,000 population and one of whom is an elected official representing a county under 40,000 population;

(4) Two members serving as building officials with the responsibility for administering building, plumbing, electrical and heating codes, one of whom serves a county and one of whom serves a city;

(5) One member who is a registered architect;

(6) One member who is a registered engineer;

(7) Two members who are licensed general contractors, at least one of whom specializes in residential construction;

(8) One member who is a licensed electrical contractor;

(9) One member who is a licensed plumbing or heating contractor;

(10) One member selected from the faculty of the North Carolina State University School of Engineering and one member selected from the faculty of the School of Engineering of the North Carolina Agricultural and Technical State University;

(11) One member selected from the faculty of the Institute of Government;

(12) One member selected from the Department of Community Colleges;

(13) One member selected from the Division of Engineering and Building Codes in the Department of Insurance; and,

(14) Two members who are citizens of the State.

The various categories shall be appointed as follows: (1), (2), (3), and (14) by the Governor; (4), (5), and (6) by the Lieutenant Governor; (7), (8), and (9) by the Speaker of the House of Representatives; (10) by the deans of the respective schools of engineering of the named universities; (11) by the Director of the Institute of Government; (12) by the President of the Division of Community Colleges; and (13) by the Commissioner of Insurance.

(b) The members shall be appointed for staggered terms and the initial appointments shall be made prior to September 1, 1977, and the appointees shall hold office until July 1 of the year in which their respective terms expire and until their successors are appointed and qualified as provided hereafter:

For the terms of one year: the members from subdivisions (1), (6) and (10) of subsection (a), and one member from subdivision (3).

For the terms of two years: the member from subdivision (11) of subsection (a), one member from subdivision (2), one member from subdivision (4), one member from subdivision (7), and one member from subdivision (14).

For the terms of three years: the members from subdivisions (8) and (12) of subsection (a), one member from subdivision (2), one member from subdivision (4), and one member from subdivision (14).

For the terms of four years: the members from subdivision (5), (9) and (13) of subsection (a), one member from subdivision (3), and one member from subdivision (7).

Thereafter, as the term of each member expires, his successor shall be appointed for a term of four years. Notwithstanding the appointments for a term of years, each member shall serve at the will of the Governor.

Members of the Board who are public officers shall serve ex officio and shall perform their duties on the Board in addition to the duties of their office.

(c) Vacancies in the Board occurring for any reason shall be filled for the unexpired term by the person making the appointment. (1977, c. 531, s. 1.)

§ 143-151.10. Compensation. — Members of the Board who are State officers or employees shall receive no salary for serving on the Board, but shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Board who are full-time salaried public officers or employees other than State officers or employees shall receive no salary for serving on the Board, but shall be reimbursed for subsistence and travel expenses in accordance with G.S. 138-5(a)(2) and (3). All other members of the Board shall receive compensation and reimbursement for expenses in accordance with G.S. 138-5(a). (1977, c. 531, s. 1.)

§ 143-151.11. Chairman; vice-chairman; other officers; meetings; reports. — (a) The members of the Board shall select one of their members as chairman upon its creation, and shall select the chairman each July 1 thereafter.

(b) The Board shall select a vice-chairman and such other officers and committee chairmen from among its members, as it deems desirable, at the first regular meeting of the Board after its creation and at the first regular meeting after July 1 of each year thereafter. Provided, nothing in this subsection shall prevent the creation or abolition of committees or offices of the Board, other than the office of vice-chairman, as the need may arise at any time during the year.

(c) The Board shall hold at least four regular meetings per year upon the call of the chairman. Special meetings shall be held upon the call of the chairman or the vice-chairman, or upon the written request of four members of the Board.

(d) The activities and recommendations of the Board with respect to standards for Code officials training and certification shall be set forth in regular and special reports made by the Board. Additionally, the Board shall present special reports and recommendations to the Governor or the General Assembly, or both, as the need may arise or as the Governor or the General Assembly may request. (1977, c. 531, s. 1.)

§ 143-151.12. Powers. — In addition to powers conferred upon the Board elsewhere in this Article, the Board shall have the power to:

(1) Promulgate rules and regulations for the administration of this Article including the authority to require the submission of reports and information by State agencies, local inspection departments, and local governing bodies within this State relating to the employment, education and training of Code-enforcement officials;

(2) Establish minimum standards for employment as a Code-enforcement official: (i) in probationary or temporary status, and (ii) in permanent positions;

(3) Certify persons as being qualified under the provisions of this Article to be Code-enforcement officials;

(4) Consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, community colleges, technical institutes, and other institutions concerning the development of Code-enforcement training schools and programs or courses of instruction;

(5) Establish minimum standards and levels of education or equivalent experience for all Code-enforcement instructors, teachers or professors;

(6) Conduct and encourage research by public and private agencies which shall be designed to improve education and training in the administration of Code enforcement;

(7) Adopt and amend bylaws, consistent with law, for its internal management and control; appoint such advisory committees as it may deem necessary; and enter into contracts and do such other things as may be necessary and incidental to the exercise of its authority pursuant to this Article; and,

(8) Make recommendations concerning any matters within its purview pursuant to this Article. (1977, c. 531, s. 1.)

§ 143-151.13. Required standards and certificates for Code-enforcement officials. — (a) The Board shall provide by regulation that on and after July 1, 1979, no person may engage in Code enforcement pursuant to this Article unless he possesses one of the following types of certificates, currently valid, issued by the Board attesting to his qualifications to hold such position: (i) a standard certificate; (ii) a limited certificate provided for in subsection (c); or (iii) a probationary certificate, valid for one year only, provided for in subsection (d). To obtain a standard certificate, a person must pass an examination, as prescribed by the Board, which is based on the North Carolina State Building Code and administrative procedures required to enforce the Code. The Board shall issue a standard certificate of qualification to each person who successfully completes the examination authorizing the person named therein to practice as a qualified Code-enforcement official in North Carolina. The certificate of qualification shall bear the signatures of the chairman and secretary of the Board.

(b) The Board shall establish by regulation appropriate performance levels, including designation of territory and type and size of buildings and structures, and classes of qualified Code-enforcement officials and may develop examinations and prescribe course of instruction for the various levels and classes. The certificate of qualification shall set forth the performance level for which the Code-enforcement official is qualified. The Board may by regulation limit the jurisdiction of Code-enforcement officials based on the performance level for which they have qualified; provided, a person who receives a certificate of qualification at the highest performance level established by the Board shall be entitled to serve anywhere in North Carolina.

(c) A Code-enforcement official holding office as of the date specified in this subsection for the county or municipality by which he is employed, shall not be required to possess a standard certificate as a condition of tenure or continued employment but shall be required to complete such in-service training as may be prescribed by the Board. At the earliest practicable date, such official shall receive from the Board a limited certificate qualifying him to engage in Code enforcement at the performance level and within the governmental jurisdiction in which he is employed. The limited certificate shall be valid only as an authorization for the official to continue in the position held on June 13, 1977.

An official holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position.

(d) The Board may provide for the issuance of probationary or temporary certificates valid for one year to any Code-enforcement official newly employed or newly promoted who lacks the qualifications prescribed by the Board as prerequisite to applying for a standard certificate under subsection (a). No official may have his probationary or temporary certificate extended beyond one year by renewal or otherwise. The Board may by regulation provide for appropriate levels of probationary or temporary certificates and may issue these certificates with such special conditions or requirements relating to the place of employment of the person holding the certificate, his supervision on a consulting or advisory basis, or other matters as the Board may deem necessary to protect the public safety and health.

(e) The Board shall, without requiring an examination, issue a standard certificate to any person who is currently certified as a county electrical inspector pursuant to G.S. 153A-351. The certificate issued by the Board shall authorize the person to serve at the electrical inspector level approved by the Commissioner of Insurance in G.S. 153A-351.

(f) The Board shall issue a standard certificate to any person who is currently licensed to practice as a(n):

(1) Architect, registered pursuant to Chapter 83;
(2) General contractor, licensed pursuant to Article 1 of Chapter 87;
(3) Plumbing or heating contractor, licensed pursuant to Article 2 of Chapter 87;
(4) Electrical contractor, licensed pursuant to Article 4 of Chapter 87; or,
(5) Professional engineer, registered pursuant to Chapter 89;

provided the person successfully completes a short course, as prescribed by the Board, relating to the State Building Code regulations and Code-enforcement administration. The standard certificate shall authorize the person to practice as a qualified Code-enforcement official at the performance level determined by the Board, based on the type of license or registration held in any profession specified above. (1977, c. 531, s. 1.)

§ 143-151.14. Comity. — The Board may, without requiring an examination, grant a standard certificate as a qualified Code-enforcement official to any person who, at the time of application, is certified as a qualified Code-enforcement official by a similar board of another state, district or territory where standards are acceptable to the Board and not lower than those required by this Article. A fee of not more than twenty dollars ($20.00), as determined by the Board, must be paid by the applicant to the Board for the issuance of a certificate under the provisions of this section. The provisions of G.S. 143-151.16(b) relating to renewal fees and late renewals shall apply to every person granted a standard certificate in accordance with this section. (1977, c. 531, s. 1.)

§ 143-151.15. Return of certificate to Board; reissuance by Board. — A certificate issued by the Board pursuant to this Article shall remain valid only so long as the person certified is employed by the State of North Carolina or any political subdivision thereof as a Code-enforcement official. When the person certified leaves such employment for any reason, he shall return the certificate to the Board. If the person subsequently obtains employment as a Code-enforcement official in any governmental jurisdiction described above, the Board shall reissue the certificate to him. The provisions of G.S. 143-151.16(b) relating to renewal fees and late renewals shall apply, if appropriate. The provisions of G.S. 143-151.16(c) shall not apply. The provisions of this section shall not affect the Board's power to suspend or revoke any certificate pursuant to G.S. 143-151.17. (1977, c. 531, s. 1.)

§ 143-151.16. Certification fees; renewal of certificates. — (a) The Board shall establish a schedule of fees to be paid by each applicant for certification as a qualified Code-enforcement official. Such fee shall not exceed twenty dollars ($20.00) for each applicant.

(b) A certificate, other than a probationary certificate, as a qualified Code-enforcement official issued pursuant to the provisions of this Article must be renewed annually on or before the first day of July. Each application for renewal must be accompanied by a renewal fee to be determined by the Board, but not to exceed ten dollars ($10.00). The Board is authorized to charge an extra two dollar ($2.00) late renewal fee for renewals made after the first day of July each year.

(c) Any person who fails to renew his certificate for a period of two consecutive years may be required by the Board to take and pass the same examination as unlicensed applicants before allowing such person to renew his certificate. (1977, c. 531, s. 1.)

§ 143-151.17. Grounds for disciplinary actions; investigation; administrative procedures. — (a) The Board shall have the power to suspend, revoke or refuse to grant any certificate issued under the provisions of this Article to any person who:

(1) Has been convicted of a felony against this State or the United States, or convicted of a felony in another state that would also be a felony if it had been committed in this State;
(2) Has obtained certification through fraud, deceit, or perjury;
(3) Has knowingly aided or abetted any person practicing contrary to the provisions of this Article or the State Building Code;
(4) Has defrauded the public or attempted to do so;
(5) Has affixed his signature to a report of inspection or other instrument of service if no inspection has been made by him or under his immediate and responsible direction; or,
(6) Has been guilty of willful misconduct, gross negligence or gross incompetence.

(b) The Board may investigate the actions of any qualified Code-enforcement official or applicant upon the verified complaint in writing of any person alleging a violation of subsection (a). The Board may suspend or revoke the certification of any qualified Code-enforcement official and refuse to grant a certificate to any applicant, whom it finds to have been guilty of one or more of the actions set out in subsection (a) as grounds for disciplinary action.

(c) The Board shall establish administrative rules and regulations for actions under this section which shall be in accordance with the requirements of Chapter 150A. Such rules and regulations shall include provisions for the removal of suspensions, the reissuance of certificates, and the conditions for these actions. (1977, c. 531, s. 1.)

§ 143-151.18. Violations; penalty; injunction. — On and after July 1, 1979, it shall be unlawful for any person to represent himself as a qualified Code-enforcement official who does not hold a currently valid certificate of qualification issued by the Board. Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and punishable in the discretion of the court. The Board is authorized to apply to any judge of the superior court for an injunction in order to prevent any violation or threatened violation of the provisions of this Article. (1977, c. 531, s. 1.)

§ 143-151.19. Administration. — (a) The Division of Engineering and Building Codes in the Department of Insurance shall provide clerical and other staff services required by the Board, and shall administer and enforce all provisions of this Article and all rules and regulations promulgated pursuant to this Article, subject to the direction of the Board, except as delegated by this Article to local units of government, other State agencies, corporations, or individuals.

(b) A certified copy of this Article and all rules and regulations promulgated pursuant thereto shall be filed with the Attorney General in accordance with Article 5 of Chapter 150A. The Board shall have printed additional copies of this Article and all rules and regulations promulgated pursuant thereto which shall be available to the public at a price determined by the Board.

(c) The Board shall keep current a record of the names and addresses of all qualified Code-enforcement officials and additional personal data as the Board deems necessary. The Board annually shall publish a list of all currently certified Code-enforcement officials.

(d) Each certificate issued by the Board shall contain such identifying information as the Board requires.

(e) The Board shall issue a duplicate certificate to practice as a qualified Code-enforcement official in place of one which has been lost, destroyed, or mutilated upon proper application and payment of a fee to be determined by the Board. (1977, c. 531, s. 1.)

§ 143-151.20. Donations and appropriations. — (a) In addition to appropriations made by the General Assembly, the Board may accept for any of its purposes and functions under this Article any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize, disburse and transfer the same, subject to the approval of the Council of State. Any arrangements pursuant to this section shall be detailed in the next regular report of the Board. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any moneys received by the Board pursuant to this section shall be deposited in the State treasury to the account of the Board.

(b) The Board may provide grants as a reimbursement for actual expenses incurred by the State or political subdivision thereof for the provisions of training programs of officials from other jurisdictions within the State. The Board, by rules and regulations, shall provide for the administration of the grant program authorized herein. In promulgating such rules, the Board shall promote the most efficient and economical program of Code-enforcement training, including the maximum utilization of existing facilities and programs for the purpose of avoiding duplication. (1977, c. 531, s. 1.)

§§ 143-151.21 to 143-151.25: Reserved for future codification purposes.

ARTICLE 9C.

Enforcement of Building Code Insulation and Energy Utilization Standards.

(This Article expires July 1, 1979.)

§ 143-151.26. Purpose and intent. — Because of present and impending shortages of energy supplies, it is imperative that efforts be made to conserve and utilize such supplies as efficiently as possible. As a mechanism for achieving such efficiency, the State Building Code has been amended to include requirements for insulation and efficient energy utilization in buildings erected in this State. However, over half of the counties of the State and many of its smaller towns presently lack inspectors to enforce these provisions. In addition, in view of the widespread publicity accorded this problem and proposed tax inducements at both the State and federal levels for installing insulation and other measures to improve efficiency of energy utilization, there is a danger that consumers may be defrauded by unscrupulous sellers or installers of such materials. This Article is intended to provide an interim solution to these two problems, pending further guidance from federal authorities and general enforcement of the Code in all areas of the State. (1977, c. 703, s. 1.)

Editor's Note. — Session Laws 1977, c. 703, s. 12, provides: "This act shall become effective upon ratification and shall remain in effect until July 1, 1979. The 1979 General Assembly shall review experience under this act and such other relevant information as may enable it to achieve the objectives of this act more effectively, and may enact such further legislation as appears desirable."

§ 143-151.27. Designation of local inspectors. — Prior to September 1, 1977, the superintendent of each county, city, or joint inspection department (created under the provisions of Chapter 153A, Article 18, Part 4, or Chapter 160A, Article 19, Part 5, or Chapter 160A, Article 20, Part 1, or by local or special act of the General Assembly) shall designate the person or persons in that department responsible for enforcement of the insulation and energy utilization standards of the State Building Code and send their names and addresses to the Engineering and Building Codes Division of the North Carolina Department of Insurance; provided, nothing herein shall be construed to require the hiring of additional inspection personnel in any county, city, or joint inspection department which is in existence on June 23, 1977. In every county or city which does not have an inspection department, the governing board shall designate one or more "energy and insulation inspectors" and make such notification to the Department of Insurance; the territorial jurisdiction of such inspectors shall be the jurisdiction of the appointing unit, as specified in G.S. 160A-360, and they shall possess all applicable enforcement powers of a county or city inspection department. (1977, c. 703, s. 2.)

§ 143-151.28. Training course for inspectors. — Prior to January 1, 1978, and periodically thereafter, the Engineering and Building Codes Division of the Department of Insurance shall make available to the personnel designated pursuant to G.S. 143-151.27 a course or courses of instruction covering the insulation and energy utilization requirements of the State Building Code for dwellings or other structures which are not required by law to be designed by a registered architect or professional engineer. (1977, c. 703, s. 3.)

§ 143-151.29. Permits. — On and after January 1, 1978, no person, firm, or corporation may for a consideration install, alter, or restore any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards without first securing a permit either from the inspection department with jurisdiction over the work site, or in the absence of such a department, from an energy and insulation inspector with appropriate jurisdiction. Such permit may be either (i) a general building permit evidencing full compliance with all applicable requirements of the State Building Code and other State and local laws, issued by an inspection department, or (ii) a special permit issued by an energy and insulation inspector evidencing compliance with the insulation and energy utilization standards of the State Building Code. (1977, c. 703, s. 4.)

§ 143-151.30. Contents of permit. — A general building permit shall meet all the requirements of G.S. 153A-357 or G.S. 160A-417. A special permit shall comply with applicable requirements of those sections, but instead of containing a provision that the work done "shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations" it shall contain a provision that the work done "shall comply with the insulation and energy utilization standards of the State Building Code." Either type of permit shall give the name of the installer, his address, the number of any license or permit he has to engage in the profession or business of installing insulation or the type of installation proposed, and the estimated cost of the installation. (1977, c. 703, s. 5.)

§ 143-151.31. Persons entitled to permit. — No permit shall be issued under this Article to any person, firm, or corporation who is not either (i) licensed as a contractor to do the proposed work, under Chapter 87 of the General Statutes, or (ii) the holder of an annual license or permit to do such work issued by the county or city with jurisdiction over the site, pursuant to G.S. 153A-134, G.S. 160A-194, or a special or local act of the General Assembly; provided, however, that this requirement shall not apply to an owner working upon his own building nor to an installer working under the supervision of a registered architect or professional engineer, whose name and registration number shall appear upon the face of the permit. (1977, c. 703, s. 6.)

§ 143-151.32. Inspections by inspection department or energy and insulation inspector. — During the progress of the work and at its conclusion, the inspection department or energy and insulation inspector shall make inspections as prescribed by G.S. 153A-360, G.S. 153A-363, G.S. 160A-420, and G.S. 160A-423. The installer shall notify the inspector at times specified by the inspector when the work is ready for different stages of inspection. When only a special permit has been issued, the energy and insulation inspector shall issue a certificate of compliance which states only that the work complies with the insulation and energy utilization standards of the State Building Code. When work is done on an existing building, it may be occupied while work is in progress and prior to issuance of the certificate of compliance. (1977, c. 703, s. 7.)

§ 143-151.33. Inspection by architect or engineer. — When work done under a permit is required under the provisions of Chapters 83 and 89C of the General Statutes or any other statute to be done pursuant to plans or specifications prepared by a registered architect or professional engineer, or when the work was done under the supervision of a registered architect or professional engineer as permitted by G.S. 143-151.31, the architect or engineer, or both, shall inspect the work done and shall issue a certificate of compliance with the insulation and energy utilization standards of the State Building Code to the local inspection department or energy and insulation inspector and to the owner. (1977, c. 703, s. 8.)

§ 143-151.34. Contract provisions. — All sales contracts or other contracts executed for the installation of insulation or other energy utilization materials or equipment shall contain a provision that the work will meet the requirements of the State Building Code. Any guarantees relating to quality of materials, expected performance, quality of work, or equipment to be installed shall be in writing and a copy thereof shall be delivered to the owner and shall become a part of the contract. (1977, c. 703, s. 9.)

§ 143-151.35. License revocation. — Willful or repeated violation of the State Building Code requirements as to insulation or energy utilization equipment or materials shall be a basis for revocation of the installer's license as a contractor under Chapter 87 of the General Statutes or as an installer under a local ordinance adopted pursuant to G.S. 153A-134 or G.S. 160A-194. Any inspection department or energy and insulation inspector having knowledge of such violations shall bring them to the attention of the appropriate licensing authority for disciplinary action. (1977, c. 703, s. 10.)

§ 143-151.36. Penalty. — Willful violation of any provision of this Article shall constitute a misdemeanor punishable in the discretion of the court. In addition to or in lieu of such remedy, the city or county with jurisdiction or the State Commissioner of Insurance may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation. (1977, c. 703, s. 11.)

§§ 143-151.37 to 143-151.41: Reserved for future codification purposes.

ARTICLE 9D.

Master Electrical and Natural Gas Meters Prohibited.

§ 143-151.42. Prohibition of master meters for electric and natural gas service. — From and after September 1, 1977, in order that each occupant of an apartment or other individual dwelling unit may be responsible for his own conservation of electricity and gas, it shall be unlawful for any new residential building, as hereinafter defined, to be served by a master meter for electric service or natural gas service. Each individual dwelling unit shall have individual electric service with a separate electric meter and, if it has natural gas, individual natural gas service with a separate natural gas meter, which service and meters shall be in the name of the tenant or other occupant of said apartment or other dwelling unit. No electric supplier or natural gas supplier, whether regulated public utility or municipal corporation or electric membership corporation supplying said utility service, shall connect any residential building for electric service or natural gas service through a master meter, and said electric or natural gas supplier shall serve each said apartment or dwelling unit by separate service and separate meter and shall bill and charge each individual occupant of said separate apartment or dwelling unit for said electric or natural gas service. A new residential building is hereby defined for the purposes of this section as any building for which a building permit is issued on or after September 1, 1977, which includes two or more apartments or other family dwelling units. Provided, however, that any owner or builder of a multi-unit residential building who desires to provide central heat or air conditioning or central hot water from a central furnace, air conditioner or hot water heater which incorporates solar assistance or other designs which accomplish greater energy conservation than separate heat, hot water, or air conditioning for each dwelling unit, may apply to the North Carolina Utilities Commission for approval of said central heat, air conditioning or hot water system, which may include a central meter for electricity or gas used in said central system, and the Utilities Commission shall promptly consider said application and approve it for such central meters if energy is conserved by said design. This section shall apply to any dwelling unit normally rented or leased for a minimum period of one month or longer, including apartments, condominiums and townhouses, but shall not apply to hotels, motels, dormitories, rooming houses or nursing homes, or homes for the elderly. (1977, c. 792, s. 9.)

Editor's Note. — This section, which was enacted as § 143A-180.4 by Session Laws 1977, c. 792, s. 9, was erroneously codified as § 143-151.2 in the 1977 Cumulative Supplement.

Session Laws 1977, c. 792, s. 10, contains a severability clause.

ARTICLE 10.

Various Powers and Regulations.

§ 143-152. Injury to water supply misdemeanor. — If any person shall in any way intentionally or maliciously damage or obstruct any waterline of any public institution, or in any way contaminate or render the water impure or injurious, he shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1893, c. 63, s. 3; Rev., s. 3458; C. S., s. 7526.)

§ 143-153. Keeping swine near State institutions; penalty. — On the petition of a majority of the legal voters living within a radius of one quarter of a mile of the administrative building of any State educational or charitable institution, it shall be unlawful for any person to keep swine or swine pens within such radius of one quarter of a mile. Any person violating this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than ten ($10.00) nor more than fifty dollars ($50.00). (1909, c. 706; C. S., s. 7527.)

§ 143-154. Expenditures for departments and institutions; accounting and warrants. — All expenditures of any character allowed by the General Assembly in making appropriations and not covered in the appropriations named shall be charged against the department or institution for which the expense is incurred, and the State Auditor's warrant shall be made to show clearly for what purpose the expenditure is made. The warrant shall be charged against the department or institution, thereby showing the total amount expended for the maintenance and expenses of such department or institution. (1917, c. 289; C. S., s. 7528.)

§ 143-155. Institutions to file monthly statements with Auditor. — On the fifteenth of each month it shall be the duty of the head of each State institution to prepare an itemized statement of all the disbursements of such institution for the preceding month, and file the same with the State Auditor on blanks to be prepared and furnished to him by the Auditor. (1911, c. 99; C. S., s. 7529.)

§ 143-156. Certain institutions to report to Governor and General Assembly. — It shall be the duty of the boards of directors, managers, or trustees of the several State institutions for the insane, or the several institutions for the deaf, dumb, and blind, and of the State Prison to submit their respective reports to the Governor, to be transmitted by him with his message to the General Assembly. (1883, c. 60, ss. 2, 4; Rev., s. 5373; C. S., s. 7530.)

§ 143-157. Reports of departments and institutions; investigations and audits. — All State departments and State institutions shall make reports to the Governor from time to time as may be required by him, and the Governor is empowered to have all departments of the State government and State institutions examined and audited from time to time, and shall employ such experts to make audits and examinations and to analyze the reports of such institutions and departments as he may deem to be necessary. (1917, c. 58, s. 7; C. S., s. 7531.)

§ 143-158. Special investigations. — At any time, upon complaint made to him or upon his own motion, the Governor may appoint a special commission to investigate any State department or State institution, which commission shall have power to subpoena witnesses, require the production of books and papers, and to do all things necessary to a full and thorough investigation, and shall submit its findings to the Governor. The members of such special commission shall, while engaged in the performance of their duties, receive their actual expenses and a per diem of four dollars ($4.00). (1917, c. 58, s. 8; C. S., s. 7532.)

§ 143-159. Governor given authority to direct investigation. — The Governor is hereby authorized and empowered to call upon and direct the Attorney General to investigate the management of or condition within any department, agency, bureau, division or institution of the State, or any other matters pertaining to the administration of the Executive Department, when the Governor shall determine that such an investigation shall be necessary. (1927, c. 234, s. 1.)

§ 143-160. Conduct of investigation. — Whenever called upon and requested by the Governor as set out in G.S. 143-159, the Attorney General shall conduct such investigation at such reasonable time and place as may be determined by him. He shall have power to issue subpoenas, administer oaths, compel the attendance of witnesses and the production of papers necessary and material in such investigation. All subpoenas issued by him shall be served by the sheriff or other officer of any county to which they may be directed. Parties interested in such investigation may appear at the hearing and be represented by counsel, who shall have the right to examine or cross-examine witnesses.

All persons subpoenaed to attend any hearing before the Attorney General shall, for a failure so to attend and testify, be subject to the same penalties as prescribed by law for such failure in the superior court. (1927, c. 234, s. 2.)

§ 143-161. Stenographic record of proceedings. — A stenographic record of the proceedings had in such investigation shall be taken and copy thereof forwarded by the Attorney General to the Governor with his report. (1927, c. 234, s. 3.)

§ 143-162: Repealed by Session Laws 1955, c. 984.

ARTICLE 11.

Revenue Bonds and Governmental Aid.

§ 143-163. State agencies may issue bonds to finance certain public undertakings. — The several departments, institutions, agencies and commissions of the State of North Carolina, acting at the suggestion of the Governor of North Carolina, with the approval of the Council of State, are hereby authorized to issue bonds of the several departments, agencies or commissions of the State, in such sum or sums, not to exceed in the aggregate two million dollars ($2,000,000), at such time or times, in such denominations as may be determined, and at such rate of interest as may be most advantageous to the several departments, institutions, agencies and commissions of the State, the said bonds to run for a period not exceeding 30 years from date, which bonds may be sold and delivered as other like bonds of the State of North Carolina: Provided, however, that the credit of the State of North Carolina, or any of its departments, institutions, agencies or commissions, shall not be pledged further in the payment of such bonds, except with respect to the rentals, profits and proceeds received in connection with the undertaking, for which said bonds are issued, and said bonds and interest so issued shall be payable solely out of the receipts from the undertaking for which they were issued, without further obligation on the part of the State of North Carolina, or any of its departments, institutions, agencies or commissions, provided that no State department or institution issuing any of said bonds shall be allowed to pledge any of its appropriations received from the State as security for these bonds; provided, further, that no State department, institution, agency or commission of the State shall make application for or issue any bonds, as provided in this section, after June 1, 1941. (1935, c. 479, s. 1; Ex. Sess. 1936, c. 2, s. 1; 1937, c. 323; 1939, c. 391.)

§ 143-164. Acceptance of federal loans and grants permitted. — The State of North Carolina, and its several departments, institutions, agencies and commissions, are hereby authorized to accept and receive loans, grants, and other assistance from the United States government, departments and/or agencies thereof, for its use, and to receive like financial and other aid from other agencies in carrying out any undertaking which has been authorized by the Governor of North Carolina, with the approval of the Council of State. (1935, c. 479, s. 2.)

§ 143-165. Approval by Governor and Council of State necessary; covenants in resolutions authorizing bonds. — The several departments, institutions, agencies and commissions of the State of North Carolina, before issuing any revenue bonds as herein provided for any undertaking, shall first receive the approval of the undertaking from the Governor of North Carolina, which action shall be approved by the Council of State before such undertaking shall be entered into and revenue bonds issued in payment therefor in whole or in part.

Any resolution or resolutions heretofore or hereafter adopted authorizing the issuance of bonds under this Article may contain covenants which shall have the force of contract so long as any of said bonds and interest thereon remain outstanding and unpaid as to

(1) The use and disposition of revenue of the undertaking for which the said bonds are to be issued,
(2) The pledging of all the gross receipts or any part thereof derived from the operation of the undertaking to the payment of the principal and interest of said bonds including reserves therefor,
(3) The operation and maintenance of such undertaking,
(4) The insurance to be carried thereon and the use and disposition of the insurance moneys,
(5) The fixing and collection of rates, fees and charges for the services, facilities and commodities furnished by such undertaking sufficient to pay said bonds and interest as the same shall become due, and for the creation and maintenance of reasonable reserve therefor,
(6) Provisions that the undertaking shall not be conveyed, leased or mortgaged so long as any of the bonds and interest thereon remain outstanding and unpaid.

Provided, however, that the credit of the State of North Carolina or any of its departments, institutions, agencies or commissions shall not be pledged to the payment of such bonds except with respect to the rentals, profits and proceeds received in connection with the undertaking for which the said bonds are issued, and that none of the appropriations received from the State shall be pledged as security for said bonds. (1935, c. 479, s. 3; Ex. Sess. 1936, c. 2, s. 2.)

ARTICLE 12.

Law-Enforcement Officers' Benefit and Retirement Fund.

§ 143-166. Law-Enforcement Officers' Benefit and Retirement Fund. — (a) In every criminal case finally disposed of in the criminal courts of this State, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere and is assessed with the payment of costs, or where the costs are assessed against the prosecuting witness, there shall be assessed against said convicted person, or against such prosecuting witness, as the case may be, three dollars ($3.00) additional cost to be collected and paid over to the Treasurer of North Carolina and held in a special fund for the purposes of this Article. Two dollars ($2.00) of such costs shall be administered under subsections (b) through (q) of this section, and one dollar ($1.00) shall be administered under subsections (r) through (w) of this section. The local custodian of such costs shall monthly transmit such moneys to the State Treasurer, with a statement of the case in which the same has been collected, except that the requirement to submit a statement of the case does not apply in district court counties. The costs assessed under this Article shall not apply to violations of municipal ordinances, unless a warrant is actually issued and served. A county or municipality shall pay no part of the costs or assessments.

Two thirds of the moneys so received shall annually be set up in a special fund to be known as "The Law-Enforcement Officers' Benefit and Retirement Fund."

(b) For the purpose of determining the recipients of benefits under this section and the amounts thereof to be disbursed and for formulating and making such rules and regulations as may be essential for the equitable and impartial distribution of such benefits to and among the persons entitled to such benefits, there is hereby created a board to be known as "The Board of Commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund," which shall consist of the State Auditor, who shall be chairman ex officio of said Board, the State Treasurer, the State Insurance Commissioner, and four members to be appointed by the Governor and to serve at his will, one of whom shall be a sheriff, one a police officer, one from the group of law-enforcement officers as hereinafter defined, employed by the State, and one representing the public at large. No member of said Board of Commissioners shall receive any salary, compensation or expenses other than that provided in G.S. 138-5 for each day's attendance at duly and regularly called and held meetings of the Commission, the total of which meetings for which per diem may be allowable as herein provided not to exceed eight meetings in any one year. Four members of said Board shall constitute a quorum at any of said meetings, and no business shall be transacted unless a quorum be present. Ex officio members shall not receive any per diem.

(c) As soon as is practicable after March 13, 1941, and after the appointment of the four members herein authorized to be appointed by the Governor, the organization of said Board shall be perfected by the selection from its members of a vice-chairman, and secretary, to serve for a term of one year and until their successors shall have been elected and qualified, and by the selection by the Board, by a majority vote, of such employees as in the opinion of the Board, with the approval of the Governor, may be necessary for the proper handling of the business of the Board of Commissioners, such employee or such employees to hold office at the will of the Board of Commissioners. No employee of the Board of Commissioners shall during the period of such employment or during any leave of absence therefrom hold any public office, be a candidate for any public office, or engage in any political activity whatsoever for or on behalf of any candidate for public office, either in the primary or election. The violation of the restriction herein contained against political activity shall subject such employee to immediate discharge; and any such employee who shall use any funds of the Commission for political purposes or shall incur any expense whatsoever in connection with any political activity, paid or payable out of the funds of said Commission, shall be guilty of a misdemeanor and upon conviction thereof shall be punishable as provided by law in the case of misdemeanors. Nothing herein contained shall prevent any employee from exercising his individual right of franchise in any primary or election. Nothing in this section shall affect the right of any employee of said Commission who is at present a member of the General Assembly from continuing as such member for the duration of such present term.

(d) The said Board of Commissioners shall have control of all payments to be made from such fund. It shall hear and decide all applications for compensation and for retirement benefits created and allowed under this Article, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties; it shall have the power to make decisions on applications for compensation or retirement benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the Board itself; it shall cause to be kept a record of all its meetings and proceedings. Any person who shall willfully swear falsely in any oath or affirmation for the purpose of obtaining any benefits under this Article, or the payment thereof, shall be guilty of perjury and shall be punished therefor as provided by law. The Board of Commissioners shall have authority to determine the membership eligibility or status of any member or applicant of any and all of those who come within the categories of law-enforcement officers named in subsection (m) of this section in accordance with general rules and regulations adopted by the Board and the decision of the Board of Commissioners as to such membership eligibility or status shall be final.

(e) There shall be kept in the office of the said Board of Commissioners by the secretary, records which shall give a complete history and record of all actions of the Board of Commissioners in granting benefits, including retirement benefits, to peace officers as herein defined; such records shall give the name, date of the beginning of his service as a peace officer, and of his incapacity and the reason therefor. All records, papers, and other data shall be carefully preserved and turned over to the succeeding officers or Board members.

(f) On or before the first day of January of each year the said Board of Commissioners shall make to the Governor of the State of North Carolina a verified report containing a statement of all receipts and disbursements, together with the name of each beneficiary, and the amount paid to each beneficiary, for or on account of such fund. There shall be annually made by the State Auditor's Department a complete audit and examination of the receipts and the disbursements of the Board of Commissioners herein created.

(g) The Board of Commissioners of the said fund may take by gift, grant, devise, or bequest, any money, real or personal property, or other things of value and hold or invest the same for the uses of said fund in accordance with the purposes of this Article. And the Board shall have the authority to invest and reinvest any funds not immediately needed in any of the following:

(1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States;
(2) Obligations of the federal intermediate credit banks, federal home loan banks, Federal National Mortgage Association, banks for cooperatives, and federal land banks;
(3) Obligations of the State of North Carolina;
(4) General obligations of other states of the United States;
(5) General obligations of cities, counties, and special districts in North Carolina;
(6) Obligations of any corporation within the United States if such obligations bear either of the three highest ratings of at least two nationally recognized rating services;
(7) Notes secured by mortgages on real estate located within the State of North Carolina and insured by the Federal Housing Commissioner, or his successor or assigns, or in debentures issued by such Commissioner, which are guaranteed as to principal and interest by the United States or by the Federal Housing Administration, an agency of the United States government, or by some other agency of the United States government;
(8) In certificates of deposit in any bank or trust company authorized to do business in North Carolina in which the deposits are guaranteed by the Federal Deposit Insurance Corporation not to exceed the sum of ten thousand dollars ($10,000) in any one bank or trust company; and
(9) In the shares of federal savings and loan associations and State chartered building or savings and loan associations in which deposits are guaranteed by the Federal Savings and Loan Insurance Corporation, not to exceed fifteen thousand dollars ($15,000) in any one of such associations.

Subject to the limitations set forth above, said Board shall have full power to hold, purchase, sell, assign, transfer and dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as the proceeds of said investments and any moneys belonging to said funds.

(h) In case the amount derived from the different sources mentioned and included in this Article shall not be sufficient at any time to enable the said Board of Commissioners to pay each person entitled to the benefits therefor, in full, the compensation granted, or the retirement benefit allowed, then an equitably graded percentage of such monthly payment or payments shall be made to each beneficiary until said fund shall be replenished sufficiently to warrant the resumption thereafter of such compensation or retirement benefit to each of said beneficiaries.

(i) The Board of Commissioners herein created shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine the eligibility of officers for benefits under this Article, payable to peace officers who may be killed or become seriously incapacitated while in the discharge of their duty; such rules, regulations and standards shall include the amount of the benefits to be paid to the recipient in case of incapacity to perform his duty, as well as the amount to be paid such officer's dependents in case such officer is killed while in the discharge of his duty. The said Board is also authorized to promulgate rules and regulations and set up standards under and by which officers may be eligible for retirement and to determine the amounts to be paid such officers as retirement benefits after it has been determined by the Board that such officers are so eligible.

In order for an officer to be eligible for retirement benefits under this Article, he shall contribute into the fund herein created six percent (6%) of his compensation received for each pay period beginning on or after July 1, 1977. Such rate shall apply uniformly to all members of the Law-Enforcement Officers' Benefit and Retirement Fund, without regard to their coverage under the Social Security Act. The mode of payment to the fund shall be determined by the Board of Commissioners. Provided, that any officer so contributing to the fund herein created, who has become incapacitated in the line of duty, shall not be required to contribute to the fund during the period of his disability. All peace officers as herein defined who are compensated on a fee basis, before they shall be eligible to participate in the retirement fund herein provided for, shall pay into the fund a monthly amount to be determined by the said Board, based upon such officer's average monthly income.

The Board of Commissioners shall have the authority to formulate and promulgate rules and regulations under which any county, city, town or other subdivision of government in whose behalf any member performs service as a law-enforcement officer, or any member, may, and is hereby authorized to, elect to pay into the fund for credit to the individual account of such member any one or more of the following:

(1) An amount which, when taken with any additional amount which may be permitted by the Board to be paid on behalf of such member, shall not exceed in any year fifteen percent (15%) of such member's compensation; and

(2) A sum not to exceed three times the value of prior service of such member as determined by the Board of Commissioners; and

(3) A sum not to exceed ten percent (10%) of gross salary that would have been paid to the retiring member, had he been compensated for all accumulated sick leave at the time of retirement, which amount would be in lieu of any other compensation for accumulated sick leave;

such amounts so paid shall be accumulated in the individual account of such member at such rate of interest as the Board of Commissioners may from time to time determine and shall, upon retirement of such member be used to provide such additional benefits as the Board of Commissioners shall determine on the basis of the tables and rate of interest last adopted by the Board of Commissioners for this purpose: Provided, however, that the amounts paid under this provision by any county, city, town, or other subdivision of government shall revert to said county, city, town or other subdivision of government upon the death or withdrawal from the fund of a member for whom such amounts were paid. The sums paid by any county, city, town or other subdivision of government as additional payments are hereby declared to be for a public purpose.

It shall be the duty of the State of North Carolina to finance and contribute, for the benefit of each member employed by the State as a law-enforcement officer, a five percent (5%) contribution and a sum not to exceed ten percent (10%) of gross salary that would have been paid to the retiring member, had he been compensated for all accumulated sick leave at the time of retirement, which amount would be in lieu of any other compensation for accumulated sick leave. Such contribution or financing on the part of the State shall be on a percentage basis and shall be credited to the individual account of such member, and upon the death or withdrawal from the fund of a member such sums credited to that individual member's account shall revert to the general fund or Highway Fund or Wildlife Fund of the State of North Carolina according to the source of the original appropriation. The Board of Commissioners are hereby authorized to formulate and promulgate additional rules and regulations for the administration of the amounts herein authorized to be appropriated. There is hereby appropriated from the general fund of the State for those law-enforcement officers whose salary is paid out of the general fund, and from the Highway Fund of the State for those law-enforcement officers whose salary is paid out of the Highway Fund appropriation in such amount as may be necessary to pay the State's share of the cost of the financing of this provision for the biennium 1949-51. Such appropriation shall be made at the same time and manner as other State appropriations and in the sums and amounts as determined by the Board of Commissioners: Provided, that this provision as to the financing of a member's prior service and the cost of matching contribution on the part of the State of North Carolina shall apply only to those members who are law-enforcement officers of the State of North Carolina and its departments, agencies and commissions and who would be eligible for membership in the Teachers' and State Employees' Retirement System provided by Chapter 135 of the General Statutes of North Carolina but for the fact that said officers are members of the Law-Enforcement Officers' Benefit and Retirement Fund.

(j) All officers who have contributed to the Retirement Fund herein provided for, and who have at least 15 years of creditable service in the fund, shall be eligible for reduced retirement benefits at age 50. The Board of Commissioners is authorized, under the rules and regulations promulgated by it, to determine when an officer has accumulated at least 15 years of creditable service, and it shall not be necessary that the member be actively employed as an officer at the time of his application for retirement benefits.

All officers who have contributed to the Retirement Fund herein provided for, and who have at least 10 years of membership service in the fund, shall be eligible for retirement benefits at age 55. The Board of Commissioners is authorized, under the rules and regulations promulgated by it, to determine when an officer has accumulated at least 10 years of membership service, and it shall not be necessary that the member be actively employed as an officer at the time of his application for retirement benefits.

(k) The Board of Commissioners is authorized and empowered in its discretion, upon a finding that any officer who has contributed to the retirement fund herein provided for has been discharged from the service through no fault of his own, to reimburse from the fund herein created an amount not to exceed that which such officer has contributed to the fund under the provisions of subsection (i) of this section.

(l) No officers as herein defined shall be eligible to the retirement benefits herein provided for until the expiration of five years from the date of the ratification of this Article.

(m) "Law-enforcement officers" in the meaning of this Article shall mean all officers employed by the State of North Carolina or any political subdivision thereof, who are clothed with the full power of arrest and whose primary duty is that of enforcing on public property the criminal laws of the State and/or serving civil processes. The term "law-enforcement officers," for purposes of participating in this fund and for receiving benefits under this section, includes otherwise qualified persons who are members of the fund and who are participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 provided the requirements of Article 10 of Chapter 126 are met; provided further, that a member participating in an intergovernmental exchange of personnel under Article 10 of Chapter 126 shall be entitled to any death benefits to which he would otherwise be entitled regardless of whether he and his employers are making contributions to the member's account during the exchange period except that no duplicate benefits shall be paid.

(n) Each justice of the peace required to assess and collect the additional cost provided for in this law shall, on or before the first day of each month, transmit such cost so collected, giving the name of the case in which such cost was taxed, to the clerk of the superior court of the county in which such case was tried, who will forthwith remit such funds to the Treasurer of the State of North Carolina as in all other cases. Failure of any justice of the peace to comply with the terms of this subsection shall make such justice of the peace liable for removal from office by the resident judge of the judicial district in which such action was tried.

(o) No State employees participating in the retirement benefits of this Article shall be eligible to participate in the retirement benefits provided by Public Laws, 1941, Chapter 25, known as "The Teachers' and State Employees' Retirement System Act."

(p) No State employee participating in the retirement benefits of this Article shall be eligible to participate in the retirement benefits provided by "The Teachers' and State Employees' Retirement System Act," G.S. 135-1 et seq.

(q) The right of a person to a pension, an annuity, or a retirement allowance, to the return of contributions, the pension, annuity, or retirement allowance itself, any optional benefit or any other right accrued or accruing to any person under the provisions of this section, and the moneys in the various funds created by this section, are hereby exempt from any State or municipal tax, and exempt from levy and sale, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this section specifically otherwise provided.

(r) One third of the sum derived from the court costs provided for in subsection (a) of this section shall be set aside and held in a separate fund, designated as "Separate Benefit Fund," to be used for the payment of benefits as hereinafter provided.

(s) The Board of Commissioners shall have control of all payments to be made from the "Separate Benefit Fund." It shall hear and decide all applications for benefits created and allowed under this subsection, and shall have power to make all necessary rules and regulations for its administration and government, and for the employees in the proper discharge of their duties, and it shall have the power to make decisions on applications for benefits and its decision thereon shall be final and conclusive and not subject to review or reversal, except by the Board itself. The Board of Commissioners shall have authority to determine the eligibility or status of any applicant of any and all of those who come within the categories of law-enforcement officers named in subsection (m) of this section, in accordance with general rules and regulations adopted by the Board, and the decision of the Board of Commissioners as to such membership, eligibility or status shall be final.

(t) The Board of Commissioners shall have power and authority to promulgate rules and regulations and to set up standards under and by which it may determine eligibility for benefits under this subsection, of a law-enforcement officer, (as defined in this section) and to determine the amounts to be paid after it is determined by the Board that such officer is eligible. Notwithstanding the foregoing, no person shall be eligible for benefits hereunder unless he is in active service as a law-enforcement officer at the occurrence of a contingency for which benefits may be payable, or unless he has retired from such service on or after July 1, 1965. Eligibility shall be determined without regard to whether or not an officer is a member of the retirement fund established by this section. Benefits may be provided by the Board, within the availability of funds, as follows:

(1) A lump sum payable to the designated beneficiary upon the death of an eligible officer;

(2) Hospital, surgical, and medical benefits covering eligible officers, their legal spouses, and their dependent children under 18 years of age.

(u) The benefits provided for in subsection (t) of this section shall be in addition to all benefits provided for in subsections (b) through (q) of this section.

(v) If the amount derived from the increase in court costs provided by this section shall not be sufficient at any time to enable the Board of Commissioners to pay each person entitled to benefits in full, then an equitably graded percentage of such payment or payments shall be made to each beneficiary until the "Separate Benefit Fund" is replenished sufficiently to warrant resumption thereafter of full benefits to each of said beneficiaries.

(w) "Local fund" shall mean any local pension fund, or local benefit fund, or local association established before July 1, 1965, under authorization of law and operated to provide benefits for law-enforcement officers of any political subdivision within the year beginning July 1, 1965.

At such date as the Board of Commissioners may determine, but not later than September 30, 1966, the Board may, but need not, cause to be paid from the "Separate Benefit Fund" to a local fund a portion of the income previously received by the "Separate Benefit Fund" within the year beginning July 1, 1965, from court costs collected in the political subdivision and to whose officers such local fund has provided benefits. Such portion, if any, shall be determined in the sole discretion of the Board of Commissioners, after its review of any pertinent information which shall be furnished by such political subdivision at the request of such Board, and after its review of the operation and experience of the "Separate Benefit Fund" to June 30, 1966, or, if earlier, to the date of such determination. Any decision or action hereunder by the Board of Commissioners shall be final and conclusive.

(x) Notwithstanding any of the foregoing provisions, the benefits to each beneficiary on the retirement rolls as of June 30, 1977, shall be increased by five percent (5%) of the benefits being received by each such beneficiary as of June 30, 1977.

(y) Notwithstanding any of the foregoing provisions, a member upon retirement in accordance with subsection (1) of Section 5 of Rules and Regulations incorporated and effected July 1, 1973, by the Board of Commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund, shall receive a basic service retirement allowance equal to one and fifty-five one-hundredths percent (1.55%) of his average final compensation, multiplied by the number of years of his creditable service, and reduced by one third of one percent ($^1/_3$ of 1%) for each month by which his date of retirement precedes his fifty-fifth birthday, except that no such reduction in the basic service retirement allowance shall apply to any member who has 30 or more years of creditable service at the time of his retirement, and any member who retires with 30 or more years of creditable service shall be considered eligible for benefits at any age.

Any member upon retirement in accordance with subsection (3) of Section 5 of Rules and Regulations incorporated and effected July 1, 1973, by the Board of Commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund shall receive a basic disability retirement allowance equal to one and fifty-five one-hundredths percent (1.55%) of his average final compensation multiplied by the number of years of creditable service which he would have had if he had continued in service until his fifty-fifth birthday. Average final compensation shall mean the average annual compensation of a member during the four consecutive years of membership service (48 consecutive employment months) that produce the highest average annual compensation. (1937, c. 349, s. 9; 1939, c. 6, ss. 2, 3; c. 233; 1941, cc. 56, 157; 1943, c. 145; 1949, c. 1055; 1951, c. 382; 1953, c. 883; 1957, c. 839; c. 846, s. 2½; 1961, c. 397; 1963, cc. 144, 939, 953; 1965, c. 351, ss. 1, 2; 1967, c. 691, s. 52; c. 943; 1971, c. 80, ss. 1, 2; c. 837, s. 6; c. 1235; 1973, c. 931; 1977, c. 783, s. 4; c. 1090.)

Local Modification. — Village of Pinehurst: 1977, c. 245.

Cross Reference. — As to Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefit Act, see § 143-166.1 et seq.

Editor's Note. — The first 1977 amendment added the second sentence of subsection (m).

The second 1977 amendment substituted the present first, second and third sentences of the second paragraph of subsection (i) for "In order for an officer to be eligible for retirement benefits under this Article, he shall voluntarily pay into the fund herein created a percentage of his monthly salary, which percentage shall be determined by the said Board," deleted "voluntarily" preceding "contributing" in the fourth sentence of the second paragraph of subsection (i) and preceding "pay into the fund" in the fifth sentence of the second paragraph of subsection (i), and substituted "five percent (5%)" for "matching" in the first sentence of the fourth paragraph of subsection (i). The amendment also rewrote subsection (j) and added subsections (x) and (y).

Session Laws 1971, c. 837, contains provisions as to transfer of wildlife protectors from the Teachers' and State Employees' Retirement System to the Law-Enforcement Officers' Benefit and Retirement Fund. Session Laws 1973, c. 572, amended by Session Laws 1973, c. 874, contains provisions as to the transfer of law-enforcement officers who are members of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System to the Law-Enforcement Officers' Benefit and Retirement Fund.

Session Laws 1977, c. 783, s. 5, contains a severability clause.

ARTICLE 12A.

Law-Enforcement Officers', Firemen's, Rescue Squad Workers' and Civil Air Patrol Members' Death Benefits Act.

§ 143-166.1. Purpose. — In consideration of hazardous public service rendered to the people of this State, there is hereby provided a system of benefits for dependents of law-enforcement officers, firemen, rescue squad workers and senior Civil Air Patrol members killed in the discharge of their official duties. Official duties of a fireman is defined as being those duties performed while in training or in the course of responding to or returning from a fire call within his own fire district or a call for assistance from any other fire department or organization within the State of North Carolina. (1959, c. 1323, s. 1; 1965, c. 937; 1973, c. 634, s. 2; 1975, c. 284, s. 6; 1977, c. 797.)

Editor's Note. — The 1975 amendment deleted "and" following "firemen" and inserted "and senior Civil Air Patrol members."

The 1977 amendment added the second sentence.

§ 143-166.2. Definitions. — (a) The term "dependent child" shall mean any unmarried child of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol whether natural, adopted, posthumously born or whether an illegitimate child as entitled to inherit under the Intestate Succession Act, who is under 18 years of age and dependent upon and receiving his chief support from said officer or fireman or rescue squad worker or senior member of the Civil Air Patrol at the time of his death; provided, however, that if a dependent child is entitled to receive benefits at the time of the officer's or fireman's or rescue squad worker's or senior Civil Air Patrol member's death as hereinafter provided, he shall continue to be eligible to receive such benefits regardless of his age thereafter; and further provided that any child over 18 years of age who is physically or mentally incapable of earning a living and any child over 18 years of age who was enrolled as a full-time student at the time of the officer's, the fireman's, the rescue squad worker's or the senior Civil Air Patrol member's death shall so long as he remains a full-time student as defined in the Social Security Act be regarded as a dependent child and eligible to receive benefits under the provisions of this Article.

(b) The term "dependent parent" shall mean the parent of the deceased officer, fireman, rescue squad worker or senior member of the Civil Air Patrol, whether natural or adoptive, who was dependent upon and receiving his total and entire support from the officer, fireman, rescue squad worker or senior member of the Civil Air Patrol at the time of the injury which resulted in his death.

(c) The term "killed in the line of duty" shall apply to any law-enforcement officer, fireman, rescue squad worker or senior member of the Civil Air Patrol who is killed or dies as a result of bodily injuries sustained or of extreme exercise or extreme activity experienced in the course and scope of his official duties while in the discharge of his official duty or duties.

(d) The term "law-enforcement officer," "officer," or "fireman" shall mean all law-enforcement officers employed full time by the State of North Carolina or any county or municipality thereof and all full-time custodial employees of the North Carolina Department of Correction. The term "fireman" shall mean "eligible fireman" or "fireman" as defined in G.S. 118-23. The term "rescue squad worker" shall mean a person who is dedicated to the purpose of alleviating human suffering and assisting anyone who is in difficulty or who is injured or becomes suddenly ill by providing the proper and efficient care or emergency medical services. In addition, this person must belong to an organized rescue squad which is eligible for membership in the North Carolina Association of Rescue Squads, Inc., and the person must have attended a minimum of 36 hours of training and meetings in the last calendar year. Each rescue squad belonging to the North Carolina Association of Rescue Squads, Inc., must file a roster of those members meeting the above requirements with the State Auditor on or about January 1 of each year, and this roster must be certified to by the secretary of said association. In addition, the term "rescue squad worker" shall mean a member of an ambulance service certified by the Department of Human Resources pursuant to Article 26 of Chapter 130 of the General Statutes. The Department of Human Resources shall furnish a list of ambulance service members to the State Auditor on or about January 1 of each year. The term "Civil Air Patrol members" shall mean those senior members, 18 years of age and older, who are in good standing, currently trained and so certified by the Secretary of Crime Control and Public Safety or his delegate.

(e) The term "spouse" shall mean the wife or husband of the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member who survives him and who was residing with such officer, fireman, rescue squad worker, or senior Civil Air Patrol member at the time of and during the six months next preceding the date of injury to such officer, fireman, rescue squad worker or senior Civil Air Patrol member which resulted in his death and who also resided with such officer, fireman, rescue squad worker or senior Civil Air Patrol member from that date of injury up to and at the time of his death and who remains unmarried during the time benefits are forthcoming; provided, however, the part of this section requiring the spouse to have been residing with the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member for six months next preceding the date of the injury which resulted in his death shall not apply where marriage occurred during this six-month period or where the officer, fireman, rescue squad worker or senior Civil Air Patrol member was absent during this six-month period due to service in the armed forces of this country. (1959, c. 1323, s. 1; 1965, c. 937; 1969, c. 1025; 1973, c. 634, s. 2; c. 955, ss. 1, 2; 1975, c. 19, s. 49; c. 284, s. 7; 1977, c. 1048.)

Editor's Note. — The first 1975 amendment corrected an error in the first 1973 amendatory act by substituting "indicates" for "indicated" near the end of the former introductory language.

The second 1975 amendment eliminated the former introductory paragraph, inserted the references to senior Civil Air Patrol members throughout subsections (a), (b), (c) and (e), added the sixth sentence of subsection (d) and made minor changes in wording throughout the section.

The 1977 amendment rewrote subsection (d).

§ 143-166.3. Payments; determination. — (a) When any law-enforcement officer, fireman, rescue squad worker or senior Civil Air Patrol member shall be killed in the line of duty, the Industrial Commission shall award a death benefit to be paid in the amounts set forth in subsection (b) to the following:

(1) The spouse of such officer, fireman, rescue squad worker or senior Civil Air Patrol member if there be a surviving spouse; or

(2) If there be no spouse qualifying under the provisions of this Article, then payments shall be made to any surviving dependent child of such officer, fireman, rescue squad worker or senior Civil Air Patrol member and if there be more than one surviving dependent child, then said payment shall be made to and equally divided among all surviving dependent children; or

(3) If there be no spouse and no dependent child or children qualifying under the provisions of this Article, then payments shall be made to the surviving dependent parent of such officer, fireman, rescue squad worker or senior Civil Air Patrol member and if there be more than one surviving dependent parent then said payments shall be made to and equally divided between the surviving dependent parents of said officer, fireman, rescue squad worker or senior Civil Air Patrol member.

(b) Payment shall be made to the person or persons qualifying therefor under subsection (a) in the following amounts:

(1) At the time of the death of an officer, fireman, rescue squad worker or senior Civil Air Patrol member, ten thousand dollars ($10,000) shall be paid to the person or persons entitled thereto.

(2) Thereafter, five thousand dollars ($5,000) shall be paid annually to the person or persons entitled thereto until the sum of the initial payment and each annual payment reaches twenty-five thousand dollars ($25,000).

(3) In the event there is no person qualifying under subsection (a) of this section, twenty-five thousand dollars ($25,000) shall be paid to the estate of the deceased officer, fireman, rescue squad worker or senior Civil Air Patrol member at the time of death.

(c) In the event that any person or persons eligible for payments under subsection (a) of this section shall become ineligible, and other eligible person or persons qualify for said death benefit payments under subsection (a), then they shall receive the remainder of any payments up to the limit of twenty-five thousand dollars ($25,000) in the manner set forth in subsection (b) of this section.

(d) In the event any person or persons eligible for payments under subsection (a) of this section shall become ineligible and no other person or persons qualify for payments under that subsection and where the sum of the initial payment of ten thousand dollars ($10,000) and each subsequent annual payment of five thousand dollars ($5,000) does not total twenty-five thousand dollars ($25,000), then the difference between the total of the payments made and twenty-five thousand dollars ($25,000) shall immediately be payable to the estate of the deceased officer, fireman, rescue squad worker, or senior Civil Air Patrol member. (1959, c. 1323, s. 1; 1965, c. 937; 1971, c. 960; 1973, c. 634, s. 2; 1975, c. 284, s. 8.)

Editor's Note. — The 1975 amendment deleted "or" preceding "rescue squad worker" and inserted "or senior Civil Air Patrol member" following "rescue squad member" throughout the section.

§ 143-166.4. Funds; conclusiveness of award. — Such award of benefits as is provided for by this Article shall be paid from the Contingency and Emergency Fund and such amounts as may be required to pay benefits provided for by this Article are hereby appropriated from said fund for this special purpose.

The Industrial Commission shall have power to make necessary rules and regulations for the administration of the provisions of this Article. It shall be vested with power to make all determinations necessary for the administration of this Article and all of its decisions and determinations shall be final and conclusive and not subject to review or reversal except by the Industrial Commission itself. The Industrial Commission shall keep a record of all proceedings conducted under this Article and shall have the right to subpoena any persons and records which it may deem necessary in making its determinations, and the Industrial Commission shall further have the power to require all persons called as witnesses to testify under oath or affirmation, and any member of the Industrial Commission may administer oaths. If any person shall refuse to comply with any subpoena issued hereunder or to testify with respect to any matter relevant to proceedings conducted under this Article, the Superior Court of Wake County, on application of the Industrial Commission, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as for contempt. (1959, c. 1323, s. 1; 1965, c. 937.)

§ 143-166.5. Other benefits not affected. — None of the other benefits now provided for law-enforcement officers or their dependents by the Workmen's Compensation Act or other laws shall be affected by the provisions of this Article, and the benefits provided for herein shall not be diminished, abated or otherwise affected by such other provisions of law. (1959, c. 1323, s. 1; 1965, c. 937.)

§ 143-166.6. Awards exempt from taxes. — Any award made under the provisions of this Article shall be exempt from taxation by the State or any political subdivision. The Industrial Commission shall not be responsible for any determination of the validity of any claims against said awards and shall distribute the death benefit awards directly to the dependent or dependents entitled thereto under the provisions of this Article. (1959, c. 1323, s. 1; 1965, c. 937.)

§ 143-166.7. Applicability of Article. — The provisions of this Article shall apply and be in full force and effect with respect to any law-enforcement officer, fireman, rescue squad worker or senior Civil Air Patrol member killed in the line of duty on or after May 13, 1975. (1965, c. 937; 1973, c. 634, s. 3; 1975, c. 284, s. 9.)

Editor's Note. — The 1975 amendment deleted "or" preceding "rescue squad worker," inserted "or senior Civil Air Patrol member" and substituted "May 13, 1975" for "May 22, 1973."

ARTICLE 13.

Publications.

§ 143-167: Transferred to G.S. 147-54.1 by Session Laws 1943, c. 543.

§ 143-168. Reports; conciseness; controls. — The annual or biennial reports now authorized or required to be printed by the several State agencies and institutions shall be as compact and concise as is consistent with an intelligent understanding of the work of those agencies and institutions. The details of the work of the agencies and institutions shall not be printed when not necessary to an intelligent understanding of such work, but totals and results may be tabulated and printed in their reports. The Department of Administration shall make such rules as may be necessary prescribing the scope and format of the matter to be published in annual or biennial reports, the methods of reproduction to be employed, and the number of copies of such reports to be published by the several State agencies and institutions. (1911, c. 211, s. 2; 1917, c. 202, s. 2; C. S., s. 7294; 1931, c. 261, s. 3; 1955, c. 983; 1961, c. 243, s. 2.)

§ 143-169. Limitations on publications. — (a) The Department of Administration shall make such rules as may be necessary prescribing the format of the matter to be published, the number of copies to be published, and the methods of reproduction to be employed in the publications of the several State agencies and institutions, other than annual or biennial reports.

(b) Every publication published at State expense which makes use of the multicolor process is prohibited except:

(1) In cases of scientific illustrations when the illustrations would be unintelligible if published in black and white;

(2) When the publication is a project of the Department of Natural Resources and Community Development, or is a part of the magazine "Wildlife in North Carolina," published under the auspices of the Wildlife Resources Commission; or

(3) When the express approval of the Department of Administration is obtained. (1911, c. 211, s. 2; C. S., s. 7302; 1931, c. 261, s. 3; c. 312, ss. 14, 15; 1955, c. 1203; 1961, c. 243, s. 3; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (2) of subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-169.1. State agency public document mailing lists to be updated. — (a) On or before July 1 of each year, beginning with July 1, 1976, the head of every agency of this State shall certify to the Director of the Budget that the mailing lists for each public document issued by his agency have been carefully reviewed, updated and corrected within the previous 12 months. The above date may be extended by the Director of the Budget for 90 days for good cause shown. The reviewed, updated and corrected mailing lists shall be comprised only of those persons and organizations who, within the previous 12 months, have either requested that they be included in such a mailing list or have renewed a request that they be so included.

(b) For the purposes of this section, the term "public document" shall mean any annual, biennial, regular or special report or publication of which at least 500 copies are printed for distribution by mail to the general public.

(c) For the purposes of this section, the term "agency" shall mean and include, as the context may require, State department, institution, commission, committee, board, division, bureau, officer or official; provided, however, the provisions of this section shall not apply to the General Assembly of North Carolina. (1975, c. 362, s. 1.)

§ 143-170: Repealed by Session Laws 1955, c. 986.

ARTICLE 14.

North Carolina Zoological Authority.

§§ 143-171 to 143-176.1: Repealed by Session Laws 1973, c. 1262, s. 85.

Cross Reference. — As to the North Carolina Zoological Park Council, see §§ 143B-335, 143B-336.

§ 143-177. Right to receive gifts. — In order to carry out the purposes of this Article, the Board is authorized to acquire by gift or will, absolutely or in trust, from individuals, corporations, or any other source money or other property, or any interests in property, which may be retained, sold or otherwise used to promote the purposes of this Article. The use of gifts shall be subject to such limitations as may be imposed thereon by donors, notwithstanding any other provisions of this Article. (1969, c. 1104, s. 8.)

§ 143-177.1. North Carolina Zoological Park Fund. — All gifts made to the North Carolina Zoological Park for the purposes of this Article shall be exempt from every form of taxation including, but not by the way of limitation, ad valorem, intangible, gift, inheritance and income taxation. Proceeds from the sale of any property acquired under the provisions of this Article shall be deposited in the North Carolina State treasury and shall be credited to the North Carolina Zoological Park. (1969, c. 1104, s. 9; 1973, c. 1262, s. 85.)

§ 143-177.2. Cities and counties. — Cities and counties are hereby authorized to expend funds derived from nontax sources and to make gifts of surplus property, to assist in carrying out the purposes of this Article. (1969, c. 1104, s. 10.)

§ 143-177.3. Sources of funds. — It is the intent of this Article that the funds for the creation, establishment, construction, operation and maintenance of the North Carolina Zoological Park shall be obtained primarily from private sources; however, the Council under the supervision and approval and with the assistance of the Secretary of Natural Resources and Community Development is hereby authorized to receive and expend such funds as may from time to time become available by appropriation or otherwise from the State of North Carolina; provided, that the North Carolina Zoological Park Council shall not in any manner pledge the faith and credit of the State of North Carolina for any of its purposes. (1969, c. 1104, s. 11; 1973, c. 1262, s. 85; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" near the middle of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

ARTICLE 15.

Council of State Governments.

§§ 143-178 to 143-185: Repealed by Session Laws 1975, c. 879, s. 25.

Cross Reference. — As to the North Carolina Council on Interstate Cooperation, see §§ 143B-379 through 143B-384.

§ 143-186. Council of State Governments a joint governmental agency. — The Council of State Governments is hereby declared to be a joint governmental agency of this State and of the other states which cooperate through it. (1937, c. 374, s. 10; 1959, c. 137, s. 4.)

§ 143-187: Transferred to G.S. 143-186 by Session Laws 1959, c. 137, s. 4.

§ 143-188: Repealed by Session Laws 1959, c. 137, s. 1.

ARTICLE 16.

Spanish-American War Relief Fund.

§§ 143-189, 143-190: Repealed by Session Laws 1961, c. 481.

ARTICLE 17.

State Post-War Reserve Fund.

§ 143-191. Appropriation for fund. — There is hereby appropriated from the general fund of the State the sum of twenty million dollars ($20,000,000), the said sum, together with the investments and income therefrom, to be hereafter known and designated as the State Post-War Reserve Fund. (1943, c. 6, s. 1.)

Editor's Note. — As to repeal of this Article insofar as it conflicts with §§ 142-50 through 142-54, see note under § 142-50.

§ 143-192. Fund to be invested by Governor and Council of State; State Treasurer custodian. — The Governor and Council of State are hereby fully authorized and directed to invest the said fund exclusively in bonds of the United States of America, of such series as may be readily converted into money and notes or certificates of indebtedness of the United States of America, or in bonds, notes or other obligations of any agency or instrumentality of the United States of America, when the payment of principal and interest thereof is fully guaranteed by the United States of America, and in bonds or notes of the State of North Carolina. The interest and revenues received from such investments, or profits realized in the sale thereof, shall become a part of the said State Post-War Reserve Fund and shall be likewise invested. Bonds of the State of North Carolina purchased for the said fund shall not be cancelled or retired but shall remain in full force and the income therefrom reinvested as hereinbefore provided. The State Treasurer shall be custodian of all securities and investments made under authority of this Article. (1943, c. 6, s. 2.)

§ 143-193. Fund to be held for such use as directed by General Assembly. — The said State Post-War Reserve Fund shall be held for such use as shall hereafter be directed by an act of the General Assembly of North Carolina, and no other use thereof whatsoever shall be made. (1943, c. 6, s. 3.)

Applied in Slade v. New Hanover County Bd. of Educ., 10 N.C. App. 287, 178 S.E.2d 316 (1971).

§ 143-194. Report to General Assembly. — The Governor and Council of State shall make a report in writing to the General Assembly, not later than the tenth day of each regular or special session thereof, stating the nature and amount of all receipts and disbursements from the said fund and the amount contained in said fund, and giving an itemized statement of all investments made as herein authorized, which report shall be spread upon the journals of the Senate and House of Representatives. (1943, c. 6, s. 4.)

ARTICLE 18.

Rules and Regulations Filed with Secretary of State.

§§ 143-195 to 143-198.1: Repealed by Session Laws 1973, c. 1331, s. 2.

Cross References. — For present provisions as to rule making by administrative agencies, see §§ 150A-9 through 150A-17. For present provisions as to publication of administrative rules, see §§ 150A-58 through 150A-64. As to the effect of statutory references to the repealed provisions, see the Editor's note following the analysis to Chapter 150A.

ARTICLE 19.

Roanoke Island Historical Association.

§ 143-199. Association under patronage and control of State. — Roanoke Island Historical Association, Incorporated is hereby permanently placed under the patronage and control of the State. (1945, c. 953, s. 1.)

Cross References. — As to recreation of Roanoke Island Historical Association, see § 143B-92. For statute declaring the Association not to be a State agency, see § 143B-93.

§ 143-200. Members of board of directors; terms; appointment. — The governing body of said Association shall be a board of directors consisting of the Governor of the State, the Attorney General and the Secretary of Cultural Resources as ex officio members, and the following 21 members: J. Spencer Love, Greensboro; Miles Clark, Elizabeth City; Mrs. Richard J. Reynolds, Winston-Salem; D. Hiden Ramsey, Asheville; Mrs. Charles A. Cannon, Concord; Dr. Fred Hanes, Durham; Mrs. Frank P. Graham, Chapel Hill; Bishop Thomas C. Darst, Wilmington; W. Dorsey Pruden, Edenton; John A. Buchanan, Durham; William B. Rodman, Jr., Washington; J. Melville Broughton, Raleigh; Melvin R. Daniels, Manteo; Paul Green, Chapel Hill; Samuel Selden, Chapel Hill; R. Bruce Etheridge, Manteo; Theodore S. Meekins, Manteo; Roy L. Davis, Manteo; M. K. Fearing, Manteo; A. R. Newsome, Chapel Hill. The members of said board of directors herein named other than the ex officio members, shall serve for a term of two years and until their successors are appointed. Appointments thereafter shall be made by the membership of the Association in regular annual meeting or special meeting called for such purpose, and in the event the Association through its membership should fail to make such appointments, then the appointments shall be made by the Governor of the State. Vacancies occurring on the board of directors shall be filled by the Governor of the State. (1945, c. 953, s. 2; 1973, c. 476, s. 48.)

§ 143-201. Bylaws; officers of board. — The said board of directors when organized under the terms of this Article shall have authority to adopt bylaws for the organization and said bylaws shall thereafter be subject to change only by three-fifths vote of a quorum of said board of directors; the board of directors shall choose from its membership or from the membership of the Association a chairman, a vice-chairman, a secretary and a treasurer, which offices in the discretion of the board may be combined in one, and also a historian and a general counsel. The board also in its discretion may choose one or more honorary vice-chairmen. The duly elected officers of the Association shall serve as an advisory committee to the Secretary of Cultural Resources concerning matters relating to "The Lost Colony" historical drama. (1945, c. 953, s. 3; 1973, c. 476, s. 87.)

§ 143-202. Exempt from taxation; gifts and donations. — The said Association is and shall be an educational and charitable association within the meaning of the laws of the State of North Carolina, and the property and income of such Association, real and personal, shall be exempt from all taxation. The said Association is authorized and empowered to receive gifts and donations and administer the same for the charitable and educational purposes for which the Association is formed and in keeping with the will of the donors, and such gifts and donations to the extent permitted by law shall be exempted from the purpose of income taxes and gift taxes. (1945, c. 953, s. 4.)

§ 143-203. State Auditor to make annual audit. — It shall be the duty of the State Auditor to make an annual audit of the accounts of the Association and make a report thereof to the General Assembly at each of its regular sessions. (1945, c. 953, s. 5.)

§ 143-204: Repealed by Session Laws 1977, c. 996, s. 3.

Cross Reference. — For present provisions as to allotments from the Contingency and Emergency Fund to outdoor historical dramas, see § 143-204.8.

ARTICLE 19A.

Governor Richard Caswell Memorial Commission.

§§ 143-204.1 to 143-204.4: Repealed by Session Laws 1973, c. 476, s. 116.

Cross Reference. — As to transfer of functions of the Governor Richard Caswell Memorial Commission to the Department of Cultural Resources, see § 143B-51.

ARTICLE 19B.

Historic Swansboro Commission.

§§ 143-204.5 to 143-204.7: Repealed by Session Laws 1973, c. 476, s. 116.

Cross Reference. — As to transfer of functions of the Historic Swansboro Commission to the Department of Cultural Resources, see § 143B-51.

ARTICLE 19C.

Outdoor Historical Dramas.

§ 143-204.8. Allotments to outdoor historical dramas. — (a) Upon the application of an outdoor historical drama corporation or trust, approved by the Secretary of Cultural Resources, the Governor and the Council of State may order an allotment from the Contingency and Emergency Fund of the State not to exceed fifteen thousand dollars ($15,000) a year to that outdoor historical drama corporation or trust to aid in the production of an outdoor historical drama; provided that if that corporation or trust has received State funds from any source whatsoever, including direct appropriations, during a fiscal year the Governor and the Council of State during that year may not order an allotment which, when added to the State funds otherwise received, would exceed fifteen thousand dollars ($15,000). No outdoor historical drama corporation or trust shall, during any one fiscal year, receive both an allotment under this Article from the Contingency and Emergency Fund and one from money appropriated to the Department of Cultural Resources for programs funded by the enactment of House Bill 947 of this Session [Session Laws 1977, Chapter 986].

(b) An allotment shall only be made under this section upon evidence submitted to the Governor and Council of State by the Secretary of Cultural Resources that during the immediately preceding season of production, the drama was operated at a deficit because of inclement weather or other circumstances beyond the control of the corporation or trust and that contributions or gifts made to the corporation or trust are deductible from net income for income tax purposes under G.S. 105-147(15).

(c) For purposes of this section, an "outdoor historical drama corporation or trust," means only the following corporations or trusts presenting outdoor historical dramas:

Corporation or Trust	*Outdoor Historical Drama*
Cherokee Historical Association, Incorporated	"Unto These Hills"
The Committee for an Outdoor Drama at Bath, Incorporated	"Blackbeard — The Knight of the Black Flag"
The Duplin Outdoor Drama Society, Incorporated	"The Liberty Cart: A Duplin Story"
Halifax County Historical Association	"First for Freedom"
The Moore County Historical Association, Incorporated	"The House in the Horseshoe"
The Outdoor Theatre Fund Charitable Trust	"From This Day Forward"
"Revolution!", Incorporated	"Revolution!"
Roanoke Island Historical Association, Incorporated	"The Lost Colony"
Robeson Historical Drama, Incorporated	"Strike at the Wind"
Snow Camp Historical Drama Society, Incorporated	"Sword of Peace"
Southern Appalachian Historical Association, Incorporated	"Horn in the West"
The Waxhaws Historical Festival and Drama Association	"Listen and Remember"

The above listing of dramas is for informational purposes only and shall not be construed to limit the eligibility of the specified outdoor historical drama corporation or trust to receive allotments under this section.

(d) An outdoor historical drama corporation or trust which has applied for or received an allotment under this section shall permit the State Auditor to inspect and audit its financial records. (1977, c. 996, s. 1.)

ARTICLE 20.

Recreation Commission.

§§ 143-205 to 143-210.1: Repealed by Session Laws 1969, c. 1145, s. 4.

Cross Reference. — As to transfer of functions, property, etc., of the Recreation Commission to the Department of Local Affairs, see § 143-326.

ARTICLE 21.

Water and Air Resources.

Part 1. Organization and Powers Generally; Control of Pollution.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-211. Declaration of public policy. — It is hereby declared to be the public policy of this State to provide for the conservation of its water and air resources. Furthermore, it is the intent of the General Assembly, within the context of this Article, to achieve and to maintain for the citizens of the State a total environment of superior quality. Recognizing that the water and air resources of the State belong to the people, the General Assembly affirms the State's ultimate responsibility for the preservation and development of these resources in the best interest of all its citizens and declares the prudent utilization of these resources to be essential to the general welfare. It is the purpose of this Article to create an agency which shall administer a program of water and air pollution control and water resource management. It is the intent of the General Assembly, through the duties and powers defined herein, to confer such authority upon the Department of Natural Resources and Community Development as shall be necessary to administer a complete program of water and air conservation, pollution abatement and control and to achieve a coordinated effort of pollution abatement and control with other jurisdictions. Standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Cross References. — As to organization of the Department of Natural Resources and Community Development, see §§ 143B-275 through 143B-279. As to the Board of Natural Resources and Community Development, see § 143B-280. As to the Environmental Management Commission, see §§ 143B-282 through 143B-285.

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the fifth sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

For comment on this Article, see 29 N.C.L. Rev. 365.

For article on "Introduction to Water Use Law in North Carolina," see 46 N.C.L. Rev. 1 (1967). For note on coastal land use development and

area-wide zoning, see 49 N.C.L. Rev. 866 (1971).
For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

Quoted in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-212: Repealed by Session Laws 1973, c. 1262, s. 23.

§ 143-213. Definitions. — Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

(1) The term "air cleaning device" means any method, process or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.

(2) The term "air contaminant" means particulate matter, dust, fumes, gas, mist, smoke, or vapor or any combination thereof.

(3) The term "air contamination" means the presence in the outdoor atmosphere of one or more air contaminants which contribute to a condition of air pollution.

(4) The term "air contamination source" means any source at, from, or by reason of which there is emitted into the atmosphere any air contaminant.

(5) The term "air pollution" shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, to animal or plant life or to property or that interferes with the enjoyment of life or property.

(6) The term "area of the State" means any municipality or county or portion thereof or other substantial geographical area of the State as may be designated by the Environmental Management Commission.

(7) "Commission" means the Environmental Management Commission created under the provisions of this Article and the provisions of the Executive Organization Act of 1973.

(8) "Department" means the Department of Natural Resources and Community Development.

(9) Whenever reference is made in this Article to the "discharge of waste," it shall be interpreted to include the discharge of waste into any unified sewerage system or arrangement for sewage disposal, which system or arrangement in turn discharges the waste into the waters of the State.

(10) The term "disposal system" means a system for disposing of waste, and including sewer systems and treatment works.

(11) The term "effective date" means the date, as established pursuant to the statutory powers of the Environmental Management Commission and announced by official regulations of the Environmental Management Commission after which the statutory provisions designated by the Environmental Management Commission shall become applicable and enforceable, with respect to persons within one or more watersheds, the State as a whole or one or more "areas of the State" as designated by the Environmental Management Commission.

(12) The term "emission" means a release into the outdoor atmosphere of air contaminants.

(13) The term "outlet" means the terminus of a sewer system, or the point of emergence of any waste or the effluent therefrom, into the waters of the State.

(14) "Person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(15) The term "sewer system" means pipelines or conduits, pumping stations, and force mains, and all other construction, devices, and appliances appurtenant thereto, used for conducting wastes to a point of ultimate disposal.

(16) The term "standard" or "standards" means such measure or measures of the quality of water and air as are established by the Environmental Management Commission pursuant to G.S. 143-214.1 and G.S. 143-215.

(17) The term "treatment works" means any plant, septic tank disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfill, or other works not specifically mentioned herein, installed for the purpose of treating, equalizing, neutralizing, stabilizing or disposing of waste.

(18) "Waste" shall mean and include the following:

a. "Sewage," which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

b. "Industrial waste" shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

c. "Other waste" means sawdust, shavings, lime, refuse, offal, oil, tar chemicals, and all other substances, except industrial waste and sewage, which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.

d. "Toxic waste" means that waste, or combinations of wastes, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformities, in such organisms or their offspring.

(19) The term "water pollution" means the man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of the waters of the State, including, but specifically not limited to, alterations resulting from the concentration or increase of natural pollutants caused by man-related activities.

(20) "Waters" shall mean any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction.

(21) The term "watershed" means a natural area of drainage, including all tributaries contributing to the supply of at least one major waterway within the State, the specific limits of each separate watershed to be designated by the Environmental Management Commission for all statutory purposes and to be defined by the Environmental Management Commission in its official regulations.

(22) The term "complex sources" means any facility which is or may be an air pollution source or which will induce or tend to induce development or activities which will or may be air pollution sources, and which shall

include, but not be limited to, shopping centers; sports complexes; drive-in theaters; parking lots and garages; residential, commercial, industrial or institutional developments; amusement parks and recreation areas; highways; and any other facilities which will result in increased emissions from motor vehicles or stationary sources.

(23) The term "effluent standards" or "effluent limitations" means any restrictions established pursuant to this Article on quantities, rates, characteristics and concentrations of chemical, physical, biological and other constituents of wastes which are discharged from any pretreatment facility or from any outlet or point source to the waters of the State.

(24) The term "point source" means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the waters of the State.

(25) The term "pretreatment facility" means any treatment works installed for the purpose of treating, equalizing, neutralizing or stabilizing waste from any source prior to discharge to any disposal system subject to effluent standards or limitations.

(26) The term "pretreatment standards" means effluent standards or limitations applicable to waste discharged from a pretreatment facility. (1951, c. 606; 1957, c. 1275, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 4; 1973, c. 821, ss. 1-3; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Cross References. — As to the organization of the Department of Natural Resources and Community Development, see §§ 143B-275 through 143B-279. As to the Board of Natural Resources and Community Development, see § 143B-280.

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (8).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-214: Repealed by Session Laws 1973, c. 1262, s. 23.

§ 143-214.1. Water; water quality standards and classifications; duties of Environmental Management Commission. — (a) The Environmental Management Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article:

(1) To develop and adopt, after proper study, a series of classifications and the standards applicable to each such classification, which will be appropriate for the purpose of classifying each of the waters of the State in such a way as to promote the policy and purposes of this Article most effectively;

(2) To survey all the waters of the State and to separately identify all such waters as the Environmental Management Commission believes ought to be classified separately in order to promote the policy and purposes of this Article, omitting only such waters, as in the opinion of the Environmental Management Commission, are insufficiently important to justify classification or control under this Article; and

(3) To assign to each identified water of the State such classification, from the series adopted as specified above, as the Environmental Management Commission deems proper in order to promote the policy and purposes of this Article most effectively.

(b) Criteria for Classification. — In developing and adopting classifications, and the standards applicable to each, the Environmental Management Commission shall recognize that a number of different classifications should be provided for (with different standards applicable to each) so as to give effect to the need for balancing conflicting considerations as to usage and other variable factors; that different classifications with different standards applicable thereto may frequently be appropriate for different segments of the same water; and that each classification and the standards applicable thereto should be adopted with primary reference to the best usage to be made of the waters to which such classification will be assigned.

(c) Criteria for Standards. — In establishing the standards applicable to each classification, the Environmental Management Commission shall consider and the standards when finally adopted and published shall state: the extent to which any physical, chemical, or biological properties should be prescribed as essential to the contemplated best usage.

(d) Criteria for Assignment of Classifications. — In assigning to each identified water the appropriate classifications (with its accompanying standards), the Environmental Management Commission shall consider, and the decision of the Environmental Management Commission when finally adopted and published shall contain its conclusions with respect to the following factors as related to such identified waters:

(1) The size, depth, surface area covered, volume, direction and rate of flow, stream gradient and temperature of the water;

(2) The character of the district bordering said water, including any peculiar suitability such district may have or any dominant economic interest or development which has become established in relation to or by reason of any particular use of such water;

(3) The uses and extent thereof which have been made, are being made, or may in the future be made, of such water for domestic consumption, bathing, fish or wildlife and their culture, industrial consumption, transportation, fire prevention, power generation, scientific or research uses, the disposal of sewage, industrial wastes and other wastes, or any other uses;

(4) In revising existing or adopting new water quality classifications or standards, the Commission shall consider the use and value of State waters for public water supply, propagation of fish and wildlife, recreation, agriculture, industrial and other purposes, use and value for navigation, and should take into consideration, among other things, an estimate as prepared under section 305(b)(1) of the Federal Water Pollution Control Act amendments of 1972 of the environmental impact, the economic and social costs necessary to achieve the proposed standards, the economic and social benefits of such achievement and an estimate of the date of such achievement;

(5) With regard to the groundwaters, the factors to be considered shall include the natural quality of the water below land surface and the condition of occurrences, recharge, movement and discharge, the vulnerability to pollution from wastewaters and other substances, and the potential for improvement of the quality and quantity of the water.

(e) Proposed Adoption and Assignment of Classification. — Prior to the adoption by the Environmental Management Commission of the series of classifications and standards applicable thereto as specified in subsection (a)(1) of this section, prior to the assignment by the Environmental Management Commission of any such classifications to any waters as specified in subsection (a)(3) of this section, and prior to any modification of any of such actions previously taken by the Environmental Management Commission, the Environmental Management Commission shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the following requirements:

(1) Notice of any such hearing shall be given not less than 20 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Environmental Management Commission proposes to take. The notice shall either include details of such proposed action or, where such proposed action, as in the case of proposed assignments of classifications to identified waters, is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of such detailed proposed action can be obtained on request from the Department of Natural Resources and Community Development in sufficient quantity to satisfy the requests of all interested persons.

(2) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Department of Natural Resources and Community Development pursuant to the provisions of G.S. 143-215.4.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Department on or before the first date set for the hearing. The Environmental Management Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Environmental Management Commission shall permit anyone who so desires to file a written argument or other statement with the Environmental Management Commission in relation to any proposed action of the Environmental Management Commission any time within 30 days following the conclusion of any public hearing or within any such additional time as the Environmental Management Commission may allow by notice given as prescribed in this section.

(f) Final Adoption and Assignment of Classification. — Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action of the Environmental Management Commission pursuant to this section, the Environmental Management Commission shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. When final action has been adopted and is published with respect to the assignment of classifications applicable to the identified waters of any one or more watersheds within the State, the Environmental Management Commission shall likewise publish as part of its official regulations, the effective date for the application of the provisions of G.S. 143-215.1 and 143-215.2 to persons within such watershed or watersheds.

(g) Environmental Management Commission's Power to Modify or Revoke. — The Environmental Management Commission is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this Part; any such modification or revocation, however, to be subject to the procedural requirements of this Article. (1951, c. 606; 1957, c. 1275, s. 2; 1967, c. 892, s. 1; 1969, c. 822, s. 1; 1973, c. 1262, s. 23; 1975, c. 19, s. 50; c. 583, s. 8; c. 655, s. 5; 1977, c. 771, s. 4.)

Editor's Note. — The first 1975 amendment corrected an error in the 1973 amendatory act by inserting "the" preceding "Department of Natural and Economic Resources" near the end of subdivision (1) of subsection (e).

The second 1975 amendment added subdivision (4) of subsection (d).

The third 1975 amendment added subdivision (5) of subsection (d).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" near the end of subdivisions (1) and (2) of subsection (e).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

As to legislative intent of 1969 amendment, see Session Laws 1969, c. 822, s. 2.

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-214.2. Prohibited discharges. — (a) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste to the waters of the State is prohibited.

(b) The discharge of any wastes to the subsurface or groundwaters of the State by means of wells is prohibited.

(c) The discharge of wastes, including thermal discharges, to the open waters of the Atlantic Ocean over which the State has jurisdiction are prohibited, except where such discharges are permitted pursuant to regulation duly adopted by the Environmental Management Commission. (1973, c. 698, s. 2; c. 1262, s. 23.)

§ 143-215. Effluent standards and limitations. — (a) The Environmental Management Commission is authorized and directed to develop, adopt, modify and revoke effluent standards and limitations as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations may provide, without limitation, standards or limitations for any point source or sources; standards, limitations or prohibitions for toxic wastes or combinations of toxic wastes discharged from any point source or sources; and pretreatment standards for wastes discharged to any disposal system subject to effluent standards or limitations.

(b) The effluent standards and limitations developed and adopted by the Environmental Management Commission shall be promulgated in its official regulations as provided in G.S. 143-215.3(a)(1) and shall provide limitations upon the effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the State adequate to limit the waste loads upon the waters of the State to the extent necessary to maintain or enhance the chemical, physical, biological and radiological integrity of the waters.

(c) In adopting effluent standards and limitations the Environmental Management Commission shall be guided by the same considerations and criteria set forth, from time to time, in federal law for the guidance of federal agencies administering the Federal Water Pollution Control Program. It is the intent of the General Assembly that the effluent standards and limitations adopted hereunder shall be no more restrictive than the most nearly applicable federal effluent standards and limitations. (1967, c. 892, s. 1; 1971, c. 1167, s. 5; 1973, c. 821, s. 4; c. 929; c. 1262, s. 23; 1975, c. 583, s. 1.)

Editor's Note. — The 1975 amendment deleted "concomitant with the public interest therein and the best use thereof; to preserve and protect the public health, safety and welfare; to promote propagation of and protect fish, shellfish and wildlife; to prevent damage to private and public property; and to preserve and enhance esthetic values" at the end of subsection (b).

§ 143-215.1. Control of sources of water pollution; permits required. — (a) No person shall do any of the following things or carry out any of the following activities until or unless such person shall have applied for and shall have received from the Environmental Management Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Make any outlets into the waters of the State;
(2) Construct or operate any sewer system, treatment works, or disposal system within the State;
(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State;
(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent

which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters to the extent of violating any of the standards applicable to such water;

(5) Change the nature of the waste discharged through any disposal system in any way which would exceed the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters in relation to any of the standards applicable to such waters;

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Environmental Management Commission under the provisions of this Article;

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility;

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities.

In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Environmental Management Commission shall be applicable and controlling.

In connection with the above, no such permit shall be granted for the disposal of waste into waters classified as sources of public water supply, where the Department of Human Resources determines and advises the Environmental Management Commission that such disposal is sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect thereon, until the Environmental Management Commission has referred the complete plans and specifications to the Commission for Health Services and has received advice in writing that same are approved in accordance with the provisions of G.S. 130-161.

In any case where the Environmental Management Commission denies a permit, it shall state in writing the reason for such denial and shall also state the Environmental Management Commission's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit.

(b) Environmental Management Commission's Power as to Permits. — The Environmental Management Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources.

The Environmental Management Commission shall have the power:

(1) To grant a permit with such conditions attached as the Environmental Management Commission believes necessary to achieve the purposes of this Article;

(2) Repealed by Session Laws 1975, c. 583, s. 4.

(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

No permit shall be denied and no condition shall be attached to the permit, except when the Environmental Management Commission finds such denial or such conditions necessary to effectuate the purposes of this Article.

(c) Applications for Permits and Renewals for Pretreatment Facilities and for Other Facilities Discharging to the Surface Waters. —

(1) All applications for permits and for renewal of existing permits for pretreatment facilities, outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Environmental Management Commission may prescribe the form of such applications. All applications shall be filed with the Environmental Management Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Environmental Management Commission shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from the applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application. The Environmental Management Commission may adopt such rules as it deems necessary, to be published as a part of its rules of procedure, with respect to the consideration of any application for permit or renewal and to the granting or denial thereof. Such rules may require the submission of plans and specifications and such other information as the Environmental Management Commission deems necessary to the proper evaluation of the application.

(2) a. The Department of Natural Resources and Community Development, pursuant to appropriate rules of procedure adopted by the Environmental Management Commission, shall refer each application for permit, or renewal of an existing permit, for pretreatment facilities, outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Environmental Management Commission concurs in the proposed determination, it shall cause notice of the application and of the proposed determination, along with any other data that the Environmental Management Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Environmental Management Commission through its official rules, shall prescribe the form and content of the notice.

The notice required herein shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by posting a copy of the notice at the courthouse in the county in which the pretreatment facility, outlet or point source or treatment works or disposal system discharging to the surface waters of the State lies and by publication of the notice one time in a newspaper having general circulation within the county.

b. Permits for discharges to the surface waters of domestic wastes for single family dwellings of 1,000 gallons per day or less shall be issued without the above required notice. The Commission shall by regulation delegate the issuance of such permits to local health departments.

(3) If any person desires a public hearing on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Environmental Management Commission within 30 days following date of the notice of application. The Environmental Management Commission shall consider all such requests for hearing, and if the Environmental Management Commission determines that there is a significant public interest in holding such hearing, at least 30 days' notice of such hearing shall be given to all persons to whom notice of application was sent and to any other person requesting notice. At least 30 days prior to the date of hearing, the Environmental Management Commission shall also cause a copy of the notice thereof to be posted at the courthouse door of the county in which the pretreatment facility, outlet, point source, treatment works or disposal system lies, and shall cause the notice to be published at least one time in a newspaper having general circulation in such county. The Environmental Management Commission, through its official rules, shall prescribe the form and content of the notices.

The Environmental Management Commission shall adopt appropriate rules and regulations governing the procedures to be followed in such hearings. If the hearing is not conducted by the Environmental Management Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the hearing, to the Environmental Management Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of application or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Environmental Management Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Environmental Management Commission and all decisions denying application for permit or renewal shall be in writing.

(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(d) Applications and Permits for Sewer Systems, Sewer System Extensions, and for Wastewater Treatment Facilities Not Discharging to the Surface Waters of the State. — All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for disposal systems or treatment works which do not discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Environmental Management Commission shall act on all applications for permits as rapidly as possible, but it shall have power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Environmental Management Commission to take action on an application for a permit or renewal within 90 days after all data, plans, specifications and other required information have been furnished by the applicant, shall be treated as approval of such application. The Environmental Management Commission shall adopt such rules and regulations as it deems necessary, establishing the form of and procedures for processing applications, permits and renewals. Such regulations may require the submission of plans and specifications and other information as the Environmental Management Commission deems necessary to the proper evaluation of an application. Permits and renewals issued in approving such facilities pursuant to this subsection (d) shall be effective until the date specified therein or until rescinded unless modified or revoked by the Environmental Management Commission.

(e) Hearings and Appeals. — Any person whose application for a permit or renewal is denied, or is granted subject to conditions which are unacceptable to such person, or whose permit is modified or revoked, shall have the right to a hearing before the Environmental Management Commission upon making demand therefor within 30 days following the giving of notice by the Environmental Management Commission as to its decision on such application. Unless such a demand for a hearing is made, the decision of the Environmental Management Commission on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission. (1951, c. 606; 1955, c. 1131, s. 1; 1959, c. 779, s. 8; 1967, c. 892, s. 1; 1971, c. 1167, s. 6; 1973, c. 476, s. 128; c. 821, s. 5; c. 1262, s. 23; 1975, c. 19, s. 51; c. 583, ss. 2-4; c. 655, ss. 1, 2; 1977, c. 771, s. 4.)

Editor's Note. — The first 1975 amendment corrected an error in the third 1973 amendatory act by inserting "the" preceding "Environmental Management Commission" the first time those words appear in subdivision (2) of subsection (c).

The second 1975 amendment deleted "After the effective date of water quality standards and classifications established pursuant to G.S. 143-214.1 or effluent standards or limitations established pursuant to G.S. 143-215" at the beginning of subsection (a), deleted "or to an extent beyond such minimum limits as the Environmental Management Commission may prescribe, by way of general exemption from the provisions of this subdivision, by its official regulations" at the end of subdivision (4) of that subsection, rewrote the first paragraph of subsection (b), substituted "Article" for "section" at the end of subdivision (1) of the second paragraph of subsection (b), repealed subdivision (2) of that paragraph and substituted "Article" for "section" at the end of the last paragraph of subsection (b).

The third 1975 amendment designated the first paragraph of subdivision (c)(2) as paragraph a, added paragraph b of that subdivision and substituted "Not later than 60" for "Forty-five" at the beginning of subdivision (4) of subsection (c).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of subdivision (2) of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-215.2. Special orders. — (a) Issuance. — The Environmental Management Commission is hereby empowered, after the effective date of classifications, standards and limitations adopted pursuant to G.S. 143-214.1 or G.S. 143-215, to issue (and from time to time to modify or revoke) a special order, or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the waters of the State within the area for which standards have been established. Such an order or instrument may direct such person to take, or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Environmental Management Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Environmental Management Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the water and such document shall have the same force and effect as a special order of the Environmental Management Commission issued pursuant to hearing.

(b) Procedure. — No special order shall be issued by the Environmental Management Commission (unless issued upon consent of the person affected thereby) except after a hearing in accordance with the procedural requirements specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission. Every special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(c) Appeals. — Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of G.S. 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Environmental Management Commission shall be final and binding.

(d) Effect of Compliance. — Any person who installs a treatment works for the purpose of alleviating or eliminating water pollution in compliance with the terms of, or as a result of the conditions specified in, a permit issued pursuant to G.S. 143-215.1, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Environmental Management Commission or a court rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of water pollution, for a period to be fixed by the Environmental Management Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date when such special order, consent special order, assurance of voluntary compliance, other document, or decision, or the conditions of such permit become finally effective, if:

(1) The treatment works result in the elimination or alleviation of water pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance or other document, or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document, or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1951, c. 606; 1955, c. 1131, s. 2; 1967, c. 892, s. 1; 1973, c. 698, s. 3; c. 1262, s. 23; 1975, c. 19, s. 52.)

Editor's Note. — The 1975 amendment corrected an error in the first 1973 amendatory act by inserting "pursuant" following "a permit issued" near the beginning of the introductory paragraph of subsection (d).

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

Quoted in Scarborough v. Adams, 264 N.C. 631, 142 S.E.2d 608 (1965).

§ 143-215.3. General powers of Environmental Management Commission and Department of Natural Resources and Community Development; auxiliary powers. — (a) In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Environmental Management Commission shall have the power:

(1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of Articles 21, 21A and 21B and rules of procedure establishing and amplifying the procedures to be followed in the administration of these Articles, including rules and regulations providing for the charge of a reasonable fee for processing or publicizing applications for permits issued under these Articles and for reviewing, processing and publicizing applications for construction grant awards under the Federal Water Pollution Control Act amendments of 1972; provided, however, that there shall be no fee charged to any farmer who submits an application which pertains to his farming operations. Any fees related to construction grants charged by the Commission shall be consistent with federal regulations. Fees for processing permits under these Articles shall not exceed one hundred dollars ($100.00) for any single permit application. No

regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by G.S. 143-215.4. Rules or regulations relating to permit or grant application fees shall be subject to a public hearing, prior to adoption, held under procedures established by the Environmental Management Commission.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this Article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided that any records, reports or information obtained under Articles 21, 21A and 21B (i) shall, in the case of effluent or emission data, be related to any applicable effluent or emission limitations, toxic, pretreatment or new source performance standards, and (ii) shall be available to the public except that upon a showing satisfactory to the Environmental Management Commission by any person that records, reports or information or particular part thereof (other than effluent or emission data), to which the Commission has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Commission shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to employees of the department concerned with carrying out the provisions of these Articles or when relevant in any proceeding under these Articles. The Commission shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article.

(4) To delegate such of the powers of the Environmental Management Commission as the Environmental Management Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department of Natural Resources and Community Development; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Environmental Management Commission; and provided further that the Environmental Management Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under subsection (a)(12) for the abatement of existing water or air pollution. Any employee of the Department of Natural Resources

and Community Development to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Environmental Management Commission.

(5) To institute such actions in the superior court of any county in which a violation of this Article or the rules or regulations of the Environmental Management Commission has occurred, or, in the discretion of the Environmental Management Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Environmental Management Commission may deem necessary for the enforcement of any of the provisions of this Article or of any official action of the Environmental Management Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Environmental Management Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Environmental Management Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Environmental Management Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department of Natural Resources and Community Development and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department of Natural Resources and Community Development shall notify the persons responsible for the destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Department of Natural Resources and Community Development shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be prima facie evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department of Natural Resources and Community Development to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Department of Natural Resources and Community Development on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Environmental Management Commission, after public hearing held pursuant to the provisions of G.S. 143-215.4, that the permitting of any new or additional source or sources of water or air pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this Article. The Environmental Management Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Environmental Management Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Environmental Management Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given by publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing; and by registered or certified mail at least 20 days in advance of hearing to the governing body of each county, city, town, metropolitan sewerage district, water and sewer district and any other political subdivision lying, in whole or in part, within the area; to every person within the area whose permit application is pending; to every affected or interested agency of local, State, and federal government; and to any other person whom the Environmental Management Commission believes to have a direct interest therein.

Any person who is adversely affected by the order of the Environmental Management Commission may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal.

(9) If an investigation conducted pursuant to this Article reveals a violation of any regulations, standards, or limitations adopted by the Environmental Management Commission pursuant to this Article, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document

issued pursuant to G.S. 143-215.2 or 143-215.109, the Environmental Management Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Environmental Management Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums assessed, the Environmental Management Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Environmental Management Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require any laboratory facility performing or seeking to perform any tests, analyses, measurements, or monitoring required by this Article or regulations of the Environmental Management Commission implementing the provisions of this Article to be certified by the Environmental Management Commission in accordance with standards established for such facilities in its regulations; and to charge a reasonable fee for certifying any such laboratory facility.

(11) Local Air Pollution Control Programs.—

a. To review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and any applicable standards and rules and regulations pursuant thereto. The Environmental Management Commission shall certify any local program which:

1. Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article, and the standards and rules and regulations issued pursuant thereto; provided, however, the Environmental Management Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards, rules, or regulations promulgated by the Environmental Management Commission;
2. Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;
3. Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and
4. Is approved by the Environmental Management Commission as adequate to meet the requirements of this Article and any applicable rules and regulations pursuant thereto.

b. No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of subdivision (11) of subsection (a) of this section and is so certified by the Environmental Management Commission.

c. If the Environmental Management Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the Environmental Management Commission may determine the boundaries within which such program is necessary and require such areawide program as the only acceptable alternative to direct State administration.

d. 1. If the Environmental Management Commission has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirements of this Article, the Environmental Management Commission shall, upon due notice, conduct a hearing on the matter.

2. If, after such hearing the Environmental Management Commission determines that an existing local air pollution control program or one which has been certified by the Environmental Management Commission is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.

3. If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Environmental Management Commission shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article. Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.

4. If the Environmental Management Commission finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this paragraph may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

5. Any municipality or county in which the Environmental Management Commission administers its air pollution control program pursuant to paragraph 3 of this subdivision may, with the approval of the Environmental Management Commission, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Environmental Management Commission.

6. Nothing in this Article shall be construed to supersede or oust the jurisdiction of any local air pollution control program in

operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article for certification by the Environmental Management Commission as an approved local air pollution control program. Any certification required from the Environmental Management Commission shall be deemed granted unless the Environmental Management Commission takes specific action to the contrary.

7. Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Environmental Management Commission. The Environmental Management Commission shall approve any such application if it is consistent with this Article and other applicable requirements of law.
8. Notwithstanding any other provision of this section, if the Environmental Management Commission determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Environmental Management Commission, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emissions of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary.

e. Local air pollution control programs authorized.—

1. The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article, subject to the approval of the Environmental Management Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:
   I. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;
   II. Air-quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;
   III. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;
   IV. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Environmental Management Commission; and

administration of such rules, regulations and standards in accordance with provisions of this subdivision;

V. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;

VI. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

2. Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Department of Natural Resources and Community Development and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.

3. The penalty for violation of any of the requirements contained in such ordinances, resolutions, rules or regulations shall, upon conviction, be a fine of not more than fifty dollars ($50.00) or imprisonment for not more than 30 days, except that the penalty for violation of an order for the abatement of air pollution issued by the governing body after notice and hearing shall, upon conviction, be a fine of not more than two hundred fifty dollars ($250.00) or imprisonment for not more than 30 days. Each day in violation shall constitute a separate offense and shall be subject to the foregoing penalties.

4. Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article for any violation of same.

5. In addition, each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to

finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.

6. Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Chapter 150A of the General Statutes, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.

f. Administration of county or municipal air pollution control programs. — Subject to the approval of the Environmental Management Commission as provided in this Article, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:

1. Establishing a program under the administration of the duly elected governing body of the county or municipality;
2. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;
3. Appointing an air pollution control board as provided in this section, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board; and
4. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.

g. Creation and administration of regional air pollution control programs. — In addition to any other powers provided by law and subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Environmental Management Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Environmental Management Commission for an areawide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Environmental Management Commission shall fix a place and time for a hearing before the Environmental Management Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Environmental Management Commission shall either affirm, modify or set aside the order of the assistant director.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this Article. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this provision shall apply.

(13) To certify and approve for eligibility any qualified application for State or federal grant funds available for the construction, modification, extension, maintenance, or operation of a disposal system or portion thereof. As a condition of certification and approval of any such application and of the permit issued pursuant to G.S. 143-215.1, the Environmental Management Commission may require that the applicant conform to all applicable requirements of the State or federal laws and programs under which said grant funds are available.

Nothing in this subsection shall be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

(b) Research Functions. — The Department of Natural Resources and Community Development shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department of Natural Resources and Community Development may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department of Natural Resources and Community Development shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this Article. All State departments shall advise with and cooperate with the Department of Natural Resources and Community Development on matters of mutual interest.

(c) Relation with the Federal Government. — The Environmental Management Commission as official water and air pollution control agency for the State is delegated to act in local administration of all matters covered by any existing federal statutes and future legislation by Congress relating to water and air quality control.

(d) Relations with Other States. — The Environmental Management Commission or the Department may, with the approval of the Governor, consult with qualified representatives of adjoining states relative to the establishment of regulations for the protection of waters and air of mutual interest, but the approval of the General Assembly shall be required to make any regulations binding.

(e) Variances. — Any person subject to the provisions of G.S. 143-215.1 or 143-215.108 may apply to the Environmental Management Commission for a variance from rules, regulations, standards or limitations established pursuant to G.S. 143-214.1, 143-215, or 143-215.107. The Environmental Management Commission may grant such variance, but only after public hearing on due notice, if it finds that:

(1) The discharge of waste or the emission of air contaminants occurring or proposed to occur do not endanger human health or safety; and

(2) Compliance with the rules, regulations, standards or limitations from which variance is sought cannot be achieved by application of best available technology economically achievable at the time of application for such variances, and would produce serious hardship without equal or greater benefits to the public, provided that such variances shall be consistent with the provisions of the Federal Water Pollution Control Act amendments of 1972 or the Federal Clean Air Act; and provided further, that any person who would otherwise be entitled to a variance or modification under the Federal Water Pollution Control Act amendments of 1972 or the Federal Clean Air Act shall also be entitled to the same variance from or modification in rules, regulations, standards or limitations established pursuant to G.S. 143-214.1, 143-215, and 143-215.107, respectively. (1951, c. 606; 1957, c. 1267, s. 3; 1959, c. 779, s. 8; 1963, c. 1086; 1967, c. 892, s. 1; 1969, c. 538; 1971, c. 1167, ss. 7, 8; 1973, c. 698, ss. 1-7, 9, 17; c. 712, s. 1; c. 1262, ss. 23, 86; c. 1331, s. 3; 1975, c. 583, ss. 5, 6; c. 655, s. 3; 1977, c. 771, s. 4.)

Cross References. — As to powers and duties of Board under the North Carolina Well Construction Act, see §§ 87-83 to 87-96. See also §143-354. As to powers and duties of Board with respect to sand dunes along Outer Banks, see §§ 104B-3 to 104B-16.

Editor's Note. — The first 1975 amendment substituted the present proviso in subdivision (2) of subsection (a) for a provision which read: "Provided, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision," and substituted "such variances, and" for "such variance, or" near the beginning of subdivision (2) of subsection (e) and added the proviso in that subdivision.

The second 1975 amendment substituted "Articles 21, 21A and 21B" for "this Article" near the beginning of subdivision (1) of subsection (a), substituted the language beginning "these Articles, including rules and regulations" and ending "any single permit application" for "this Article: Provided, that" in that subdivision and added the last sentence of that subdivision.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places in subdivision (a)(4), throughout subdivision (a)(7), in one place in paragraph e2 of subdivision (a)(11), and throughout subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

For note on control of pesticides, see 49 N.C.L. Rev. 529 (1971).

Power of Regional Boards to Adopt Air Quality and Emission Control Standards. — Subsection (a)(11)g does not expressly confer authority upon regional air pollution control boards to determine and adopt air quality and emission control standards. The authority, if any, must be found in the text thereof. State v. W.N.C. Pallet & Forest Prod. Co., 283 N.C. 705, 198 S.E.2d 433 (1973).

Judicial Notice of Regional Board's Rules and Regulations. — The Supreme Court cannot take judicial notice that a regional air pollution board known as the Western North Carolina Regional Air Pollution Agency has been created by two or more municipalities or counties by joint resolution or contract. A fortiori, the Court cannot take judicial notice of the contents of any rules and regulations which such a board may have adopted. The record of a criminal enforcement action must present a proper basis for passing upon whether rules and regulations adopted by such a board have constitutional validity. State v. W.N.C. Pallet & Forest Prod. Co., 283 N.C. 705, 198 S.E.2d 433 (1973).

Sufficiency of Warrant Charging Violation of Regional Board's Regulation. — A warrant which charges a violation of a regulation of the Western North Carolina Regional Air Pollution Agency, but does not allege verbatim or in substance the provisions of the alleged regulation, nor allege when and under what circumstances the alleged regulation was adopted, nor that a copy thereof has been filed with the State Board of Water and Air Resources (now the Environmental Management Commission) and with the clerk of court of the county is insufficient to show that violation of the regulation constitutes a criminal offense. State v. W.N.C. Pallet & Forest Prod. Co., 283 N.C. 705, 198 S.E.2d 433 (1973).

Authority of Local Air Pollution Control Program. — See opinion of Attorney General to Mr. W.E. Knight, N.C. Department of Water and Air Resources, 40 N.C.A.G. 526 (1970).

§ 143-215.4. General provisions as to procedure; seal; hearing officer. — (a) Persons Entitled to Notice, Mailing List. — In any proceeding pursuant to G.S. 143-215.1, 143-215.2, 143-215.3, the Department shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to G.S. 143-214.1 and 143-215, the Department shall give notice as provided by that section, and it shall also give notice of all the official acts of the Commission (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the Department to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Department, ask to be permanently recorded on such mailing list.

(b) Publication and Codification of Environmental Management Commission's Regulations and Rules. — All official acts of the Environmental Management Commission which have or are intended to have general application effect shall be incorporated either in the Environmental Management Commission's official regulations (applying and interpreting this Article), or in its rules of procedure. All such regulations and rules shall upon adoption thereof by the Environmental Management Commission be printed (or otherwise duplicated), and a duly certified copy thereof shall immediately be filed with the Attorney General in the manner provided by Chapter 150A of the General Statutes. One copy of each such action shall at the same time be mailed to all persons then on the mailing list, and additional copies shall at all times be kept at the office of the Department in sufficient numbers to satisfy all reasonable requests therefor. The Department shall codify the Commission's regulations and rules and from time to time shall revise and bring up to date such codifications.

(c) Notices. — All notices which are required to be given by the Department or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto, including the Environmental Management Commission. The date of receipt for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Department may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The Environmental Management Commission by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices.

(d) Hearings. — The following provisions, together with any additional provisions not inconsistent herewith which the Environmental Management Commission may prescribe, shall be applicable in connection with hearings pursuant to this Article, except where other provisions are applicable in connection with specific types of hearings:

(1) Any hearing held pursuant to G.S. 143-215.1 and 143-215.2 or 143-215.3, except those held pursuant to subsection (a)(12) of G.S. 143-215.3, whether called at the instance of the Environmental Management Commission or of any person, shall be held upon not less than 30 days' written notice given by the Department to any person who is, or is entitled to be, a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings shall be before the Environmental Management Commission or its authorized agent or agents, and the hearing shall be open to the public. The Environmental Management Commission, or its authorized agents, shall have the authority to administer oaths.

(3) A full and complete record of all proceedings at any hearing shall be taken by a reporter designated by the Department or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Department.

(4) The Environmental Management Commission shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) Subpoenas or subpoenas duces tecum issued by the Environmental Management Commission, in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the Environmental Management

Commission, application may be made to the superior court of the appropriate county for enforcement thereof.

(6) The burden of proof at any hearing shall be upon the person or the Environmental Management Commission, as the case may be, at whose instance the hearing is being held.

(7) No decision or order of the Environmental Management Commission shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(8) Following any hearing, the Environmental Management Commission shall afford the parties thereto a reasonable opportunity to submit within such time as prescribed by the Environmental Management Commission proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Environmental Management Commission's ruling with respect to each such requested finding of fact and conclusion of law.

(9) All orders and decisions of the Environmental Management Commission shall set forth separately the Environmental Management Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Environmental Management Commission is based.

(10) As previously recited above, the Department shall have the authority to adopt a seal which shall be the seal of said Environmental Management Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Environmental Management Commission or its minutes may be certified by the Secretary of the Department under his hand and the seal of the Department and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Environmental Management Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Environmental Management Commission or by any other person or interested party where material, relevant and competent.

(e) One or more qualified employees of the Department of Natural Resources and Community Development may be designated as hearing officers to conduct any hearings provided for in this Article in accordance with the procedures established for such hearings by law and the official rules and regulations of the Environmental Management Commission. Unless otherwise provided in the Environmental Management Commission's regulations, an order or decision of a hearing officer shall be final and to the same effect as an order or decision of the Environmental Management Commission. Appeal from a final order or decision of a hearing officer shall be as provided in G.S. 143-215.5. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 10; c. 1262, s. 23; 1977, c. 374, s. 1; c. 771, s. 4.)

Editor's Note. — The first 1977 amendment substituted "Attorney General in the manner provided by Chapter 150A of the General Statutes" for "Secretary of State" at the end of the second sentence of subsection (b).

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of subsection (e).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Quoted in State v. W.N.C. Pallet & Forest Prod. Co., 283 N.C. 705, 198 S.E.2d 433 (1973).

§ 143-215.5. Judicial review. — (a) Any person against whom a final order or decision has been entered by a hearing officer pursuant to G.S. 143-215.4(d) shall be entitled to a review of the order or decision by the full Environmental Management Commission upon written demand by such person within 10 days following notice of the order or decision given by registered or certified mail. The Environmental Management Commission shall review the order or decision, the transcript of evidence and exhibits submitted at hearing, and other pertinent matters, and, if good ground be shown therefor, shall reconsider the evidence, receive further evidence, rehear the parties or their representatives, and affirm, modify, or vacate the order or decision. If the order or decision was entered pursuant to a hearing conducted by a member or members of the Environmental Management Commission, such member or members shall be disqualified from sitting in review of the order or decision. A majority of the members of the Environmental Management Commission shall constitute the full Environmental Management Commission on review.

(b) Any person against whom a final order or decision of the Environmental Management Commission is entered pursuant to hearing conducted by the Environmental Management Commission under G.S. 143-215.4(d), or is entered upon review of an order or decision by a hearing officer or member or members of the Environmental Management Commission to whom such authority has been duly delegated, may appeal from the order or decision of the Environmental Management Commission within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, to the Superior Court of Wake County or of the county where the order or decision is effective. Upon such appeal the Department shall send a transcript certified by the Environmental Management Commission of all testimony and exhibits introduced before the Environmental Management Commission, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined de novo on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the Court of Appeals. No bond shall be required of the Environmental Management Commission to the Court of Appeals.

(1) Upon appeal filed by any party, the Department shall forthwith furnish each party to the proceeding with a copy of a certified transcript and exhibits filed with the Environmental Management Commission. A reasonable charge shall be paid the Department for said copies.

(2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 108, s. 88; c. 698, s. 11; c. 1262, s. 23.)

Editor's Note. — For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-215.6. Enforcement procedures. — (a) Civil Penalties. —

(1) A civil penalty of not more than five thousand dollars ($5,000) may be assessed by the Environmental Management Commission against any person who:

a. Violates any classification, standard or limitation established pursuant to G.S. 143-214.1 or 143-215.

b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.

d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article.

e. Refuses access to the Environmental Management Commission or its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article.

f. Violates any duly adopted regulation of the Environmental Management Commission implementing the provisions of this Article.

(2) If any action or failure to act for which a penalty may be assessed under this subsection is continuous, the Environmental Management Commission may assess a penalty not to exceed five thousand dollars ($5,000) per day for so long as the violation continues.

(3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4) The Environmental Management Commission may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Environmental Management Commission may specify, the Environmental Management Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the discretion of the Environmental Management Commission, in the superior court of the county in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Environmental Management Commission's action (which shall include a review of the amount of the assessment), shall be as provided in Chapter 150A of the General Statutes.

(b) Criminal Penalties. —

(1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-214.1 or 143-215; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.1 or of a special order or other appropriate document issued pursuant to G.S. 143-215.2; or any regulation of the Environmental Management Commission implementing any of the said sections, shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Article or regulations of the Environmental Management Commission implementing this Article, or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article or regulations of the Environmental Management Commission implementing this Article, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000), or by imprisonment not to exceed six months, or by both.

(3) Any person convicted of an offense under either subdivision (1) or subdivision (2) of this subsection following a previous conviction under such subdivision shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine, or twice the term of imprisonment provided in the subdivision under which the second or subsequent conviction occurs.

(4) For purposes of this subsection, the term "person" shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(c) Injunctive Relief. — Whenever the Department of Natural Resources and Community Development has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or any regulations adopted by the Environmental Management Commission implementing the provisions of this Article, the Department of Natural Resources and Community Development may, either before or after the institution of any other action or proceeding authorized by this Article, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the superior court of the county in which the violation occurred or may occur or, in his discretion, in the superior court of the county in which the person responsible for the violation or threatened violation resides or has his or its principal place of business. Upon a determination by the court that the alleged violation of the provisions of this Article or the regulations of the Environmental Management Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article. (1951, c. 606; 1967, c. 892, s. 1; 1973, c. 698, s. 12; c. 712, s. 2; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 583, s. 7; c. 842, ss. 6, 7; 1977, c. 771, s. 4.)

Editor's Note. — The first 1975 amendment substituted "continuous" for "willful" in subdivision (2) of subsection (a).

The second 1975 amendment redesignated former subdivision (a)(3) as present subdivision (a)(4), added present subdivision (a)(3) and substituted the language beginning "fifteen thousand dollars" and ending "which a violation continues" for "twenty-five thousand dollars ($25,000) per day of violation" near the end of subdivision (b)(1).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (a)(4) and in subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

For note on estuarine pollution, see 49 N.C.L. Rev. 921 (1971).

§ 143-215.7. Effect on laws applicable to public water supplies and the sanitary disposal of sewage. — This Article shall not be construed as amending, repealing, or in any manner abridging or interfering with those sections of the General Statutes of North Carolina relative to the control of public water supplies, as now administered by the Department of Human Resources; nor shall the provisions of this Article be construed as being applicable to or in anywise affecting the authority of the Department of Human Resources to control the sanitary disposal of sewage as provided in Article 13 of Chapter 130 of the General Statutes of North Carolina, or as affecting the powers, duties and authority of city, county, county-city and district health departments usually referred to as local health departments or as affecting the charter powers, or other lawful authority of municipal corporations, to pass ordinances in regard to sewage disposal. (1951, c. 606; 1957, c. 1357, s. 11; 1967, c. 892, s. 1; 1973, c. 476, s. 128.)

§ 143-215.8: Repealed by Session Laws 1973, c. 698, s. 13.

Cross Reference. — For present provisions covering the subject matter of the repealed section, see § 143-215.6, subsection (c).

§ 143-215.8A. Planning. — (a) Policy, Purpose and Intent. — The Environmental Management Commission and Department of Natural Resources and Community Development shall undertake a continuing planning process to develop and adopt plans and programs to assure that the policy, purpose and intent declared in this Article are carried out with regard to establishing and enforcing standards of water purity designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to enhance the quality of the environment, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development, and to insure the beneficial use of the water resources of the State.

(b) Goals. — The goals of the continuing planning process shall be the enhancement of the quality of life and protection of the environment through development by the Environmental Management Commission of water quality plans and programs utilizing the resources of the State on a priority basis to attain, maintain, and enhance water quality standards and water purity throughout the State.

(c) Statewide and Regional Planning. — The planning process may be conducted on a statewide or regional basis, as the Environmental Management Commission shall determine appropriate. If the Environmental Management Commission elects to proceed on a regional basis, it shall delineate the boundaries of each region by preparation of appropriate maps; by description referring to geographical features, established landmarks or political boundaries; or such other manner that the extent and limits of each region shall be easily ascertainable. The Environmental Management Commission shall consult officials and agencies of localities and regions in the development of plans affecting those areas.

(d) Local Planning Organizations. — The Environmental Management Commission shall submit to the Governor or his designee any plans, projections, data, comments or recommendations that he may request. If the Governor determines that the goals of this section will be more expeditiously and efficiently achieved, he may designate a representative organization, capable of carrying out a planning process for any region of the State or area therein, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area. The Environmental Management Commission shall consult with, advise, and assist any organization so designated in the preparation of its plans and shall submit to the Governor the Environmental Management Commission's comments and recommendations regarding such plans. All such organizations shall submit plans developed by them to the Governor for review, and no plan shall be effective until concurred in and approved by him.

(e) Interstate Planning Regions. — The Governor may consult and cooperate with the governor of any adjoining state in establishing an interstate planning region or area and in designating a representative organization, capable of carrying out a planning process for the region or area, to develop plans, consistent with the State's water quality management plans, for the control or abatement of water pollution within such region or area, if he determines that such region or area has common water quality control problems for which an interstate plan would be most effective.

(f) The Environmental Management Commission shall establish procedures for the development, revision and modification of plans under this section through adoption of appropriate rules and regulations. The rules and regulations of the Environmental Management Commission shall establish procedures for public hearing on all plans prior to their adoption, modification or revision, and upon adoption, they shall become the official water quality management plans of the State. (1973, c. 698, s. 13; c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsection (a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.9. Restrictions on authority of the Environmental Management Commission. — Nothing in this Article shall be construed to:

(1) Grant to the Environmental Management Commission any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works or shops;

(2) Affect the relations between employers and employees with respect or arising out of conditions of air contamination or air pollution;

(3) Supersede or limit the applicability of any law, rules and regulations or ordinances relating to industrial health or safety. (1967, c. 892, s. 1; 1973, c. 1262, s. 23.)

§ 143-215.10: Repealed by Session Laws 1973, c. 1262, s. 23.

Part 2. Regulation of Use of Water Resources.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.11. Short title. — This Part shall be known and may be cited as the Water Use Act of 1967. (1967, c. 933, s. 1.)

§ 143-215.12. Declaration of purpose. — It is hereby declared that the general welfare and public interest require that the water resources of the State be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation in order to conserve these resources and to provide and maintain conditions which are conducive to the development and use of water resources. (1967, c. 933, s. 2.)

§ 143-215.13. Declaration of capacity use areas. — (a) The Environmental Management Commission may declare and delineate from time to time, and may modify, capacity use areas of the State where it finds that the use of groundwater or surface water or both require coordination and limited regulation for protection of the interests and rights of residents or property owners of such areas or of the public interest.

(b) Within the meaning of this Part "a capacity use area" is one where the Environmental Management Commission finds that the aggregate uses of groundwater or surface water, or both, in or affecting said area (i) have developed or threatened to develop to a degree which requires coordination and regulation, or (ii) exceed or threaten to exceed, or otherwise threaten or impair, the renewal or replenishment of such waters or any part of them.

(c) The Environmental Management Commission may declare and delineate capacity use areas in accordance with the following procedures:

(1) Whenever the Environmental Management Commission believes that a capacity use situation exists or may be emerging in any area of the State, it may direct the Department to investigate and report to the Environmental Management Commission thereon.

(2) In conducting its investigation the Department shall consult with all interested persons, groups and agencies; may retain consultants; and shall consider all factors relevant to the conservation and use of water in the area, including established or pending water classifications under the Stream Sanitation Law and the criteria for such classifications. Following its investigation the Department shall render a written report to the Environmental Management Commission. This report shall include the Department's findings and recommendations as to whether the water use problems of the area involve surface waters, groundwaters or both; whether effective measures can be employed limited to surface water or to groundwater; and whether timely action by any agency or person may preclude the need for additional regulation at that time. The report shall also include such other findings and recommendations as the Department deems appropriate, including recommended boundaries for any capacity use area that may be proposed.

(3) If the Environmental Management Commission finds, following its review of the departmental report (or thereafter following its evaluation of measures taken falling short of regulation) that a capacity use area should be declared, it may adopt an order declaring said capacity use area. Prior to adopting such an order the Environmental Management Commission shall give notice of its proposed action and shall conduct one or more public hearings with respect to such proposed action.

(4) Such notice shall be given not less than 30 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Environmental Management Commission proposes to take. The notice shall either include details of such proposed action, or where such proposed action is too lengthy for

publication the notice shall specify that copies of such detailed proposed action shall be obtained on request from the Department of Natural Resources and Community Development in sufficient quantity to satisfy the requests of all interested persons.

(5) Any such notice shall be published at least once in one newspaper of general circulation circulated in each county of the State in which the water area affected is located, and a copy of such notice shall be mailed to each person on the mailing list required to be kept by the Department of Natural Resources and Community Development pursuant to the provisions of G.S. 143-215.15.

(6) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Environmental Management Commission on or before the first date set for the hearing. The Environmental Management Commission is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Environmental Management Commission shall permit anyone who so desires to file a written argument or other statement with the Environmental Management Commission in relation to any proposed action of the Environmental Management Commission any time within 30 days following the conclusion of any public hearing or within any such additional time as the Environmental Management Commission may allow by notice given as prescribed in this section.

(7) Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action by the Environmental Management Commission pursuant to this paragraph, the Environmental Management Commission shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations. The Environmental Management Commission is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modification or revocation, however, to be subject to the procedural requirements of this Part, including notice and hearing. If the Environmental Management Commission finds and orders that a capacity use area shall be declared, its order shall include a delineation of the boundary of said area, and the Department of Natural Resources and Community Development shall instruct the Secretary of the Department to prepare proposed regulations consistent with the provisions of this Part and commensurate with the degree of control needed from among the classes of permissible regulations set forth in G.S. 143-215.14.

(d) The Environmental Management Commission may conduct a public hearing pursuant to the provisions of G.S. 143-215.4 in any area of the State, whether or not a capacity use area has been declared, when it has reason to believe that the withdrawal of water from or the discharge of water pollutants to the waters in such area is having an unreasonably adverse effect upon such waters. If the Environmental Management Commission determines, pursuant to hearing, that withdrawals of water from or discharge of water pollutants to the waters within such area has resulted or probably will result in a generalized condition of water depletion or water pollution within the area to the extent that the availability or fitness for use of such water has been impaired for existing or proposed uses and that injury to the public health, safety or welfare will result if increased or additional withdrawals or discharges occur, the Environmental Management Commission may issue an order:

(1) Prohibiting any person withdrawing waters in excess of 100,000 gallons per day from increasing the amount of the withdrawal above such limit as may be established in the order.

(2) Prohibiting any person from constructing, installing or operating any new well or withdrawal facilities having a capacity in excess of a rate established in the order; but such prohibition shall not extend to any new well or facility having a capacity of less than 10,000 gallons per day.

(3) Prohibiting any person discharging water pollutants to the waters from increasing the rate of discharge in excess of the rate established in the order.

(4) Prohibiting any person from constructing, installing or operating any facility that will or may result in the discharge of water pollutants to the waters in excess of the rate established in the order.

(5) Prohibiting any agency or political subdivision of the State from issuing any permit or similar document for the construction, installation, or operation of any new or existing facilities for withdrawing water from or discharging water pollutants to the waters in such area in excess of the rates established in the order.

The determination of the Environmental Management Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall provide that the prohibitions set forth therein shall continue pending a determination by the Environmental Management Commission that the generalized condition of water depletion or water pollution within the area has ceased.

Notice setting forth the time, place and purpose of the hearing and a description by geographical or political boundaries of the area affected shall be given:

(1) By publication at least once a week for two successive weeks in a newspaper or newspapers having general circulation within the area, the date of the first publication to be at least 20 days prior to the date of hearing;

(2) By mailing copies of the notice by registered or certified mail at least 20 days in advance of hearing to the governing body of every county, city, town, and affected political subdivision lying in whole or in part within the area and to every affected or interested State and federal agency; and

(3) By posting a copy of the notice at the courthouse in every county lying, in whole or in part, within the area.

The Environmental Management Commission is also authorized, in the exercise of its discretion, to mail copies of notice by first-class mail to any person who it believes will or may be interested in or affected by the hearing.

Upon issuance of any order by the Environmental Management Commission pursuant to this subsection, a certified copy of such order shall be mailed by registered or certified mail to the governing body of every county, city, town, and affected political subdivision lying, in whole or in part, within the area and to every affected or interested State and federal agency. A certified copy of the order shall be posted at the courthouse in every county lying, in whole or in part, within the area, and a notice setting forth the substantive provisions and effective date of the order shall be published once a week for two successive weeks in a newspaper or newspapers having general circulation within the area. After publication of notice is completed, any person violating any provision of such order after the effective date thereof shall be subject to the penalties and proceedings set forth in G.S. 143-215.17.

Any person who is adversely affected by an order of the Environmental Management Commission issued pursuant to this subsection may seek judicial review of the order pursuant to the provisions of G.S. 143-215.5; and the order shall not be stayed by the appeal. (1967, c. 933, s. 3; 1973, c. 698, s. 14; c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivisions (4), (5), and (7) of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.14. Regulations within capacity use areas; scope and procedures. — (a) Following the declaration of a capacity use area by the Environmental Management Commission, it shall prepare proposed regulations to be applied in said area, containing such of the following provisions as the Environmental Management Commission finds appropriate concerning the use of surface waters or groundwaters or both:

(1) Provisions requiring water users within the area to submit reports not more frequently than at 30-day intervals concerning quantity of water used or withdrawn, sources of water and the nature of the use thereof.

(2) With respect to surface waters, groundwaters, or both: provisions concerning the timing of withdrawals; provisions to protect against or abate salt water encroachment; provisions to protect against or abate unreasonable adverse effects on other water users within the area, including but not limited to adverse effects on public use.

(3) With respect to groundwaters: provisions concerning well-spacing controls; and provisions establishing a range of prescribed pumping levels (elevations below which water may not be pumped) or maximum pumping rates, or both, in wells or for the aquifer or for any part thereof based on the capacities and characteristics of the aquifer.

(4) Such other provisions not inconsistent with this Part as the Environmental Management Commission finds necessary to implement the purposes of this Part.

(b) The Environmental Management Commission shall conduct one or more hearings upon the proposed regulations, upon notice, in accordance with the requirements of subdivisions (4)-(6) of G.S. 143-215.13(c). Upon completion of the hearings and consideration of submitted evidence and arguments with respect to any proposed regulation, the Environmental Management Commission shall adopt its final action with respect thereto, and shall publish such final action as part of its official regulations. The Environmental Management Commission is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this section, any such modifications or revocations, however, to be subject to the procedural requirements of this Part, including notice and hearing. (1967, c. 933, s. 4; 1973, c. 1262, s. 23.)

§ 143-215.15. Permits for water use within capacity use areas — procedures. — (a) In areas declared by the Environmental Management Commission to be capacity use areas no person shall (after the expiration of such period, not in excess of six months, as the Environmental Management Commission may designate) withdraw, obtain, or utilize surface waters or groundwaters or both, as the case may be, in excess of 100,000 gallons per day for any purpose unless such person shall first obtain a permit therefor from the Environmental Management Commission.

(b) When sufficient evidence is provided by the applicant that the water withdrawn or used from a stream or the ground is not consumptively used, a permit therefor shall be issued by the Environmental Management Commission without a hearing and without the conditions provided in subsection (c) of this section. Applications for such permits shall set forth such facts as the Environmental Management Commission shall deem necessary to enable it to establish and maintain adequate records of all water uses within the capacity use area.

(c) In all cases in which sufficient evidence of a nonconsumptive use is not presented the Department of Natural Resources and Community Development shall notify each person required by this Part to secure a permit of the Environmental Management Commission's proposed action concerning such permit, and shall transmit with such notice a copy of any permit it proposes to issue to such persons, which permit will become final unless a request for a hearing is made within 15 days from the date of service of such notice. The Environmental Management Commission shall have the power: (i) to grant such permit with conditions as the Environmental Management Commission deems necessary to implement the regulations adopted pursuant to G.S. 143-215.14; (ii) to grant any temporary permit for such period of time as the Environmental Management Commission shall specify where conditions make such temporary permit essential, even though the action allowed by such permit may not be consistent with the Environmental Management Commission's regulations applicable to such capacity use area; (iii) to modify or revoke any permit upon not less than 60 days' written notice to any person affected; and (iv) to deny such permit if the application therefor or the effect of the water use proposed or described therein upon the water resources of the area is found to be contrary to public interest. Any water user wishing to contest the proposed action shall be entitled to a hearing upon request therefor.

(d) In any proceeding pursuant to this section or G.S. 143-215.16 the Environmental Management Commission shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceeding who shall be made a party thereto. In all proceedings pursuant to G.S. 143-215.13 or 143-215.14 the Environmental Management Commission shall give notice as provided by these sections, and it shall also give notice of all its official acts (such as the adoption of regulations or rules of procedure) which have, or are intended to have, general application and effect, to all persons on its mailing list on the date when such action is taken. It shall be the duty of the Department of Natural Resources and Community Development to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Department of Natural Resources and Community Development ask to be permanently recorded on such mailing list.

(e) All notices which are required to be given by the Environmental Management Commission or the Department or by any party to a proceeding shall be given by registered or certified mail to all persons entitled thereto, including the Environmental Management Commission. The date of receipt or refusal for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Environmental Management Commission or the Department may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. The Environmental Management Commission may prescribe the form and content of any particular notice.

(f) The following provisions shall be applicable in connection with hearings pursuant to this Part:

(1) Any hearing held pursuant to this section or G.S. 143-215.16, whether called at the instance of the Environmental Management Commission or of any person, shall be held upon not less than 30 days' written notice given by the Environmental Management Commission to any person

who is a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings under this Part shall be before the Environmental Management Commission, or before one or more of its own members or before one or more qualified employees of the Department, and shall be open to the public. Any member of the Commission or employee of the Department of Natural Resources and Community Development to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission for decision.

(3) A full and complete record of all proceedings at any hearing under this Part shall be taken by a reporter designated by the Department or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Department of Natural Resources and Community Development.

(4) The Environmental Management Commission and its duly authorized agents shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) The Environmental Management Commission, or the duly authorized agent of such Environmental Management Commission, may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, and other documents belonging to the said person.

(6) Subpoenas issued by the Environmental Management Commission, in connection with any hearing under this Part shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a subpoena issued by the Environmental Management Commission, application may be made to the superior court of the appropriate county for enforcement thereof.

(7) The burden of proof at any hearing under this Part shall be upon the person or the Environmental Management Commission, as the case may be, at whose instance the hearing is being held.

(8) No decision or order of the Environmental Management Commission shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(9) Following any hearing, the Environmental Management Commission shall afford the parties thereto a reasonable opportunity to submit within 30 days or within such additional time as prescribed by the Environmental Management Commission, proposed findings of fact and conclusions of law and any brief in connection therewith.

(10) All orders and decisions of the Environmental Management Commission shall set forth separately the Environmental Management Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Environmental Management Commission, is based.

(11) The Department of Natural Resources and Community Development shall have the authority to adopt a seal which shall be the seal of said Environmental Management Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order,

decree, special order, rule, regulation, rule of procedure or any other official act or records of the Environmental Management Commission or its minutes may be certified by the Secretary of the Department under his hand and the seal of the Department of Natural Resources and Community Development and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Environmental Management Commission shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Environmental Management Commission or by any other person or interested party where material, relevant and competent.

(g) Any person against whom any final order or decision has been made except where no appeal is allowed as provided by G.S. 143-215.2(j) shall have a right of appeal to the Superior Court of Wake County or of the county where the order or decision is effective within 30 days after such order or decision has become final. Upon such appeal the Department of Natural Resources and Community Development shall send a certified transcript of all testimony and exhibits introduced before the Environmental Management Commission, the order or decision, and the notice of appeal to the superior court. The matter on appeal shall be heard and determined de novo on the transcript certified to the court and any evidence or additional evidence as shall be competent under rules of evidence then applicable to trials in the superior court without a jury upon any question of fact; provided, the court shall allow any party to introduce evidence or additional evidence upon any question of fact. At the conclusion of the hearing, the judge shall make findings of fact and enter his decision thereto. Appeals from the judgment and orders of the superior court shall lie to the appellate division. No bond shall be required of the Environmental Management Commission to the appellate division.

(1) Upon appeal filed by any party, the Department of Natural Resources and Community Development shall forthwith furnish each party to the proceeding with a copy of the certified transcript and exhibits filed with the Environmental Management Commission. A reasonable charge shall be paid the Department of Natural Resources and Community Development for said copies.

(2) Within 15 days after receipt of copy of certified transcript and exhibits, any party may file with the court exceptions to the accuracy or omissions of any evidence or exhibits included in or excluded from said transcript.

(h) In adopting any regulations pursuant to the provisions of G.S. 143-215.14, and in considering permit applications, revocations or modifications under this section, the Environmental Management Commission shall consider:

(1) The number of persons using an aquifer or stream and the object, extent and necessity of their respective withdrawals or uses;

(2) The nature and size of the stream or aquifer;

(3) The physical and chemical nature of any impairment of the aquifer or stream, adversely affecting its availability or fitness for other water uses (including public use);

(4) The probable severity and duration of such impairment under foreseeable conditions;

(5) The injury to public health, safety or welfare which would result if such impairment were not prevented or abated;

(6) The kinds of businesses or activities to which the various uses are related;

(7) The importance and necessity of the uses claimed by permit applicants (under this section), or of the water uses of the area (under G.S. 143-215.14) and the extent of any injury or detriment caused or expected to be caused to other water uses (including public use);

(8) Diversion from or reduction of flows in other watercourses or aquifers; and

(9) Any other relevant factors. (1967, c. 933, s. 5; 1973, c. 108, s. 89; c. 698, s. 15; c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsections (c) and (d), subdivisions (2), (3) and (11) of subsection (f), and in the introductory paragraph and subdivision (1) of subsection (g).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

The reference in subsection (g) to § 143-215.2(j) is to that section as it stood before its amendment in 1973. Present § 143-215.2 contains no subsection (j).

§ 143-215.16. Permits for water use within capacity use areas — duration, transfer, reporting, measurement, present use, fees and penalties. — (a) No permit under G.S. 143-215.15 shall be issued for a longer period than the longest of the following: (i) 10 years, or (ii) the duration of the existence of a capacity use area, or (iii) the period found by the Environmental Management Commission to be necessary for reasonable amortization of the applicant's water-withdrawal and water-using facilities. Permits may be renewed following their expiration upon compliance with the provisions of G.S. 143-215.15.

(b) Permits shall not be transferred except with the approval of the Environmental Management Commission.

(c) Every person in a capacity use area who is required by this Part to secure a permit shall file with the Environmental Management Commission in the manner prescribed by the Environmental Management Commission a certified statement of quantities of water used and withdrawn, sources of water, and the nature of the use thereof not more frequently than 30-day intervals. Such statements shall be filed on forms furnished by the Department of Natural Resources and Community Development within 90 days after the adoption of an order by the Environmental Management Commission declaring a capacity use area. Water users in a capacity use area not required to secure a permit shall comply with procedures established to protect and manage the water resources of the area. Such procedures shall be adapted to the specific needs of the area, shall be within the provisions of this and other North Carolina water resource acts, and shall be adopted after public hearing in the area. The requirements embodied in the two preceding sentences shall not apply to individual domestic water use.

(d) If any person who is required to secure a permit under this Part is unable to furnish accurate information concerning amounts of water being withdrawn or used, or if there is evidence that his certified statement is false or inaccurate or that he is withdrawing or using a larger quantity of water or under different conditions than has been authorized by the Environmental Management Commission, the Environmental Management Commission shall have the authority to require such person to install water meters, or some other more economical means for measuring water use acceptable to the Environmental Management Commission. In determining the amount of water being withdrawn or used by a permit holder or applicant the Environmental Management Commission may use the rated capacity of his pumps, the rated capacity of his cooling system, data furnished by the applicant, or the standards or methods employed by the United States Geological Survey in determining such quantities or by any other accepted method.

(e) In any case where a permit applicant can prove to the Environmental Management Commission's satisfaction that the applicant was withdrawing or using water prior to the date of declaration of a capacity use area, the Enviromental Management Commission shall take into consideration the extent to which such prior use or withdrawal was reasonably necessary in the judgment of the Environmental Management Commission to meet its needs, and shall grant a permit which shall meet those reasonable needs. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(f) The Environmental Management Commission shall also take into consideration in the granting of any permit the prior investments of any person in lands, and plans for the usage of water in connection with such lands which plans have been submitted to the Environmental Management Commission within a reasonable time after June 27, 1967. Provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(g) It is the intention of the General Assembly that if the provisions of subsection (e) or subsection (f) of this section are held invalid as a grant of an exclusive or separate emolument or privilege, within the meaning of Article I, Sec. 7 of the North Carolina Constitution, the remainder of this Part shall be given effect without the invalid provision or provisions.

(h) Pending the issuance or denial of a permit pursuant to subsection (e) or (f) of this section, the applicant may continue the same withdrawal or use which existed prior to the date of declaration of the capacity use area. (1967, c. 933, s. 6; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

The reference to the Constitution in subsection (g) is to the Constitution adopted in 1868, as amended. See now N.C. Const., Art. I, § 32.

§ 143-215.17. Enforcement procedures. — (a) Criminal Penalties. — Any person who shall be adjudged to have violated any provision of this Part shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each violation. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.

(b) Civil Penalties. —

(1) The Environmental Management Commission may assess a civil penalty of not less than one hundred dollars ($100.00) nor more than two hundred fifty dollars ($250.00) against any person who violates any provisions of, or any order issued pursuant to this Part, or who violates any duly adopted regulations of the Commission implementing the provisions of this Part.

(2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Commission may assess a penalty not to exceed two hundred fifty dollars ($250.00) per day for each day of violation.

(3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4) Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development within 30 days after receipt of notice, the Commission may request the Attorney General to institute a civil action in the superior court of the county or counties in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Commission's action (which shall include a review of the amount of the assessment) shall be as provided in G.S. 150A-51.

(c) Injunctive Relief. — Upon violation of any of the provisions of, or any order issued pursuant to this Part, or duly adopted regulation of the Commission or its predecessor implementing the provisions of this Part, the Secretary of the Department of Natural Resources and Community Development may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of same. (1967, c. 933, s. 7; 1973, c. 698, s. 16; c. 1262, s. 23; 1975, c. 842, s. 2; 1977, c. 771, s. 4.)

Editor's Note. — The 1975 amendment substituted "Criminal Penalties" for "Penalties for Violations" at the beginning of subsection (a), rewrote subsection (b) and added subsection (c), which is similar to subsection (b) as it was before the amendment.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (b)(4) and in two places in subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.18. Map or description of boundaries of capacity use areas. — (a) The Environmental Management Commission in designating and the Department in recommending the boundaries of any capacity use area may define such boundaries by showing them on a map or drawings, by a written description, or by any combination thereof, to be designated appropriately and filed permanently with the Department. Alterations in these lines shall be indicated by appropriate entries upon or additions to such map or description. Such entries shall be made under the direction of the Secretary of Natural Resources and Community Development. Photographic, typed or other copies of such map or description, certified by the Secretary of Natural Resources and Community Development, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. If the boundaries are changed pursuant to other provisions of this Part, the Department may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or all maps which it is designated to replace.

(b) The Department shall file with the Secretary of State a certified copy of the map, drawings, description or combination thereof, showing the boundaries of any capacity use area designated by the Environmental Management Commission; and a certified copy of any redrawn or altered map or drawing, and of any amendments or additions to written descriptions, showing alterations to said boundaries. The filings required by this subsection shall constitute compliance with the requirements of Article 18 of Chapter 143 of the General Statutes. (1967, c. 933, s. 8; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second and third sentences of subsection (a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.19. Rights of investigation, entry, access and inspection. — The Environmental Management Commission shall have the right to direct the conduct of such investigations as may reasonably be necessary to carry out its duties prescribed in this Part, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition, withdrawal or use of any waters, investigating water sources, or investigating the installation or operation of any well or surface water withdrawal or use facility, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the installation or operation of any well or surface water withdrawal or use facility; provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Environmental Management Commission or Department who requests entry for purposes of a lawful inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties consistent with the provisions of this Part. (1967, c. 933, s. 9; 1973, c. 1262, s. 23.)

§ 143-215.20. Rules and regulations. — The Environmental Management Commission may adopt and modify from time to time rules and regulations consistent with the provisions of this Part to implement the provisions of this Part. All such rules and regulations, and modifications thereof, shall be filed with the Attorney General as required by Chapter 150A of the General Statutes. (1967, c. 933, s. 10; 1973, c. 1262, s. 23; 1975, 2nd Sess., c. 983, s. 72.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted, in the second sentence, "Attorney General as required by Chapter 150A of the General Statutes" for "Secretary of State as required by Article 18 of Chapter 143 of the General Statutes."

§ 143-215.21. Definitions. — Unless the context otherwise requires, the following terms as used in this Part are defined as follows:

(1) "Area of the State" means any municipality or county or portion thereof or other substantial geographical area of the State as may be designated by the Environmental Management Commission.

(2) "Commission" means the Environmental Management Commission, or its successor.

(3) "Consumptive use" means any use of water withdrawn from a stream or the ground other than a "nonconsumptive use," as defined in this Part.

(4) "Department" means the Department of Natural Resources and Community Development or its successor.

(5) "Nonconsumptive use" means (i) the use of water withdrawn from a stream in such a manner that it is returned to the stream without

substantial diminution in quantity at or near the point from which it was taken; or, if the user owns both sides of the stream at the point of withdrawal, the water is returned to the stream upstream of the next property below the point of diversion on either side of the stream; (ii) the use of water withdrawn from a groundwater system or aquifer in such a manner that it is returned to the groundwater system or aquifer from which it was withdrawn without substantial diminution in quantity or substantial impairment in quality at or near the point from which it was withdrawn; (iii) provided, however, that (in determining whether a use of groundwater is nonconsumptive) the Environmental Management Commission may take into consideration whether any material injury or detriment to other water users of the area by reason of reduction of water pressure in the aquifer or system has not been adequately compensated by the permit applicant who caused or substantially contributed to such injury or detriment.

(6) "Person" shall mean any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this State or any other state or country.

(7) "Waters" shall mean any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction. (1967, c. 933, s. 11; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (4).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.22. Law of riparian rights not changed. — Nothing contained in this Part shall change or modify existing common or statutory law with respect to the relative rights of riparian owners concerning the use of surface water in this State. (1967, c. 933, s. 12.)

Part 3. Dam Safety Law.

Repeal of Part. — This Part is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.23. Short title. — This Part shall be known and may be cited as the Dam Safety Law of 1967. (1967, c. 1068, s. 1.)

§ 143-215.24. Declaration of purpose. — It is the purpose of this Part to provide for the certification and inspection of dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure of dams; to prevent injuries to persons, damage to property and loss of reservoir storage;

and to ensure maintenance of minimum stream flows below such dams of adequate quantity and quality. (1967, c. 1068, s. 2; 1977, c. 878, s. 1.)

Editor's Note. — The 1977 amendment deleted "certain" preceding "dams" near the beginning of the section and "such" preceding "dams" near the end of the section and inserted "minimum" near the end of the section.

§ 143-215.25. Definitions. — As used in this Part, unless the context otherwise requires:

(1) "Commission" means the Environmental Management Commission.

(2) "Dam" means the dam (and appurtenant works) for the impoundment or diversion of water, except that it shall not include:

a. Any dam constructed by the United States Army Corps of Engineers, the Tennessee Valley Authority, or any other department or agency of the United States government, when such department or agency designed or approved plans and supervised construction.

b. Any dam or flood retarding structure constructed with financial assistance from the United States Soil Conservation Service, when said agency designed or approved plans and supervised construction.

c. The exemptions conferred by items a and b of this subdivision shall cease when the supervising federal agency relinquishes authority for the operation and maintenance to a local entity.

d. Any dam licensed by the Federal Power Commission, or for which a license application is pending with the Federal Power Commission, or for use in connection with electric generating facilities to be constructed pursuant to a certificate of public convenience and necessity from the North Carolina Utilities Commission.

e. Any dam under a single private ownership, providing protection only to land or other property under such ownership, and posing no threat to life or property below the property under such single ownership.

f. Any dam less than 15 feet in height (measured from original stream bottom to crest of dam) or whose impoundment capacity is less than 10 acre-feet.

(3) "Department" means the North Carolina Department of Natural Resources and Community Development.

(4) "Minimum stream flows" or "minimum flows" means stream flows of a quantity and quality sufficient in the judgment of the Department to meet and maintain stream classifications and water quality standards established by the Department of Natural Resources and Community Development under G.S. 143-214.1 and applicable to the waters affected by the project under consideration. In order to ensure that such classifications and standards shall be met and maintained, the Department may impose such conditions and requirements in orders and written approvals issued under this Part as, in its judgment, may be necessary to this end, including conditions and requirements relating to the release or discharge of designated flows from impoundments, the location or design of water outlets for impoundments and of water intakes, the amount and timing of withdrawal of water from a reservoir, and the construction of submerged weirs or other devices designed to satisfy minimum stream flow requirements.

(5) "Person" includes any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities

or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or of any other state or country. (1967, c. 1068, s. 3; 1973, c. 1262, ss. 23, 38; 1977, c. 771, s. 4; c. 878, ss. 2, 4.)

Editor's Note. — The first 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivisions (3) and (4).

The second 1977 amendment deleted "or any dam costing less than five thousand dollars ($5,000)" at the end of subdivision (2)f and substituted "G.S. 143-214.1" for "the North Carolina Stream Sanitation Law" near the beginning of subdivision (4).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.26. Construction of dams. — (a) No person shall begin the construction of any dam, as defined by this Part, until at least 10 days after filing with the Department a statement concerning its height, impoundment capacity, purpose, location and other information required by the Department. Persons proposing construction described in G.S. 143-215.25, subparagraphs (2)e and f will comply with malaria control requirements of the Department of Human Resources. If on the basis of this information the Department is of the opinion that the proposed dam is not exempt from the provisions of this Part, it shall so notify the applicant, and construction shall not be commenced until a full application is filed by the applicant and approved as provided by G.S. 143-215.29. The Department may also require of applicants so notified the filing of such additional information as it deems necessary, including, but not limited to, streamflow and rainfall data, maps, plans and specifications. Every applicant for approval of a dam subject to the provisions of this Part shall also file with the Department the certificate of an engineer or contractor legally qualified in the State of North Carolina that he is responsible for the design of the dam, and that said design is safe and adequate. Should the applicant have a professional engineering staff the certificate of a registered professional engineer member of that staff legally qualified in the State of North Carolina will constitute compliance.

(b) When an application has been completed pursuant to the preceding subsection, the Department shall refer copies of the completed application papers to the Department of Human Resources, the Wildlife Resources Commission, the Board of Transportation, and such other State and local agencies as it deems appropriate for review and comment. (1967, c. 1068, s. 4; 1973, c. 476, s. 128; c. 507, s. 5; c. 1262, s. 23.)

§ 143-215.27. Repair, alteration, or removal of dam. — (a) Before commencing the repair, alteration or removal of a dam, application shall be made for written approval by the Department, except as otherwise provided by this Part. The application shall state the name and address of the applicant, shall adequately detail the changes it proposes to effect and shall be accompanied by maps, plans and specifications setting forth such details and dimensions as the Department requires. The Department may waive any such requirements. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When an application has been completed it shall be referred by the Department for agency review and report, as provided by subsection (b) of G.S. 143-215.26 in the case of original construction.

(b) When repairs are necesssary to safeguard life and property they may be started immediately but the Department shall be notified forthwith of the proposed repairs and of the work under way, and they shall be made to conform to its orders. (1967, c. 1068, s. 5.)

§ 143-215.28. Action by Environmental Management Commission upon applications. — (a) Following receipt of agency comments the Environmental Management Commission shall approve, disapprove, or approve subject to conditions necessary to ensure safety and to satisfy minimum stream flow requirements, all applications made pursuant to this Part.

(b) A defective application shall not be rejected but notice of the defects shall be sent to the applicant by registered mail. If the applicant fails to file a perfected application within 30 days the original shall be canceled unless further time is allowed.

(c) If the Environmental Management Commission disapproves an application, one copy shall be returned with a statement of its objections. If an application is approved, the approval shall be attached thereto, and a copy returned by registered mail. Approval shall be granted under terms, conditions and limitations which the Environmental Management Commission deems necessary to safeguard life and property.

(d) Construction shall be commenced within one year after the date of approval of the application or such approval is void. The Environmental Management Commission upon written application and good cause shown may extend the time for commencing construction. Notice by registered mail shall be given the Environmental Management Commission at least 10 days before construction is commenced. (1967, c. 1068, s. 6; 1973, c. 1262, s. 23.)

§ 143-215.29. Supervision by qualified engineers; reports and modification during work. — (a) Any project for which the Environmental Management Commission's approval is required under G.S. 143-215.26, 143-215.27, and 143-215.28, and any project undertaken pursuant to an order of the Commission issued pursuant to this section or G.S. 143-215.32 shall be designed and supervised by an engineer legally qualified in the State of North Carolina.

(b) During the construction, enlargement, repair, alteration or removal of a dam, the Environmental Management Commission may require such progress reports from the supervising engineer as it deems necessary.

(c) If during construction, reconstruction, repair, alteration or enlargement of any dam, the Environmental Management Commission finds the work is not being done in accordance with the provisions of the approval and the approved plans and specifications, it shall give written notice by registered mail or personal service to the person who received the approval and to the person in charge of construction at the dam. The notice shall state the particulars in which compliance has not been made, and shall order immediate compliance with the terms of the approval, and the approved plans and specifications. The Environmental Management Commission may order that no further construction work be undertaken until such compliance has been effected and approved by the Environmental Management Commission. A failure to comply with the approval and the approved plans and specifications shall render the approval revocable unless compliance is made after notice as provided in this section. (1967, c. 1068, s. 7; 1973, c. 1262, s. 23; 1977, c. 878, s. 5.)

Editor's Note. — The 1977 amendment substituted "G.S. 143-215.26, 143-215.27, and 143-215.28, and any project undertaken pursuant to an order of the Commission issued pursuant to this section or G.S. 143-215.32" for "G.S. 215.26 and 143-215.27" in subsection (a).

§ 143-215.30. Notice of completion; certification of final approval. — (a) Immediately upon completion, enlargement, repair, alteration or removal of a dam, notice of completion shall be given the Environmental Management Commission. As soon as possible thereafter supplementary drawings or descriptive matter showing or describing the dam as actually constructed shall be filed with the Department in such detail as the Environmental Management Commission may require.

(b) When an existing dam is enlarged, the supplementary drawings and descriptive matter need apply only to the new work.

(c) The completed work shall be inspected by the supervising engineers, and upon finding that the work has been done as required and that the dam is safe and satisfies minimum streamflow requirements, they shall file with the Department a certificate that the work has been completed in accordance with approved design, plans, specifications and other requirements. Unless the Environmental Management Commission has reason to believe that the dam is unsafe or is not in compliance with any applicable requirement, regulation, or law, the Environmental Management Commission shall grant final approval of the work in accordance with the certificate, subject to such terms as it deems necessary for the protection of life and property.

(d) Pending issuance of the Environmental Management Commission's final approval, the dam shall not be used except on written consent of the Environmental Management Commission, subject to conditions it may impose. (1967, c. 1068, s. 8; 1973, c. 1262, s. 23.)

§ 143-215.31. Supervision over maintenance and operation of dams. — The Environmental Management Commission shall have jurisdiction and supervision over the maintenance and operation of dams to safeguard life and property and to satisfy minimum streamflow requirements. The Environmental Management Commission is hereby authorized to adopt such standards for maintenance and operation of dams as may be necessary for the purposes of this Part. In its discretion the Environmental Management Commission may vary the standards applicable to various dams, giving due consideration to the minimum flow requirements of the stream, the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of failure of a dam to perform its function. (1967, c. 1068, s. 9; 1973, c. 1262, s. 23.)

§ 143-215.32. Inspection of dams. — (a) The Department is hereby authorized at any time to inspect any dam upon receipt of a written request of any affected person or agency, or upon a motion of the Environmental Management Commission. Within the limits of available funds the Department shall endeavor to provide for inspection of all dams at intervals of approximately five years.

(b) If the Department upon inspection finds that any dam is not sufficiently strong, or is not maintained in good repair or operating condition, or is dangerous to life or property, or does not satisfy minimum stream-flow requirements, the Department shall cause such evidence to be presented to the Commission and the Commission may issue an order directing the owner or owners of the dam to make at his or her expense maintenance, alterations, repairs, reconstruction, change in construction or location, or removal as may be deemed necessary by the Commission within a time limited by the order, not less than 90 days from the date of issuance of each order, except in the case of extreme danger to the safety of life or property, as provided by subsection (c) of this section.

(c) If at any time the condition of any dam becomes so dangerous to the safety of life or property, in the opinion of the Environmental Management Commission, as not to permit sufficient time for issuance of an order in the manner provided by subsection (b) of this section, the Environmental Management Commission may immediately take such measures as may be essential to provide emergency protection to life and property, including the lowering of the level of a reservoir by releasing water impounded or the destruction in whole or in part of the dam or reservoir. The Environmental

Management Commission may recover the costs of such measures from the owner or owners by appropriate legal action.

(d) For the purposes of this section the word "dam" shall mean any dam posing a present threat to human life or property regardless of its size and impoundment capacity, but excepting those dams described in G.S. 143-215.25(2)a, b and d. (1967, c. 1068, s. 10; 1973, c. 1262, s. 23; 1977, c. 878, s. 3.)

Editor's Note. — The 1977 amendment added subsection (d).

§ 143-215.33. Judicial review. — (a) Any person against whom a final order or decision has been entered by a hearing officer pursuant to G.S. 143-215.23 et seq., shall be entitled to a review of the order or decision by the full Commission upon written demand by such person within 10 days following notice of the order or decision given by registered or certified mail. The Commission shall review the order or decision, the transcript of evidence and exhibits submitted at hearing, and other pertinent matters, and, if good ground be shown therefor, shall reconsider the evidence, receive further evidence, rehear the parties or their representatives, and affirm, modify, or vacate the order or decision. If the order or decision was entered pursuant to a hearing conducted by a member or members of the Commission, such member or members shall be disqualified from sitting in review of the order or decision. A majority of the members of the Commission shall constitute the full Commission on review.

(b) If an applicant under this Part, or owner of a dam which is the subject of an application, or any landowner whose property would be endangered by failure of a dam, are dissatisfied with any final order or decision of the Environmental Management Commission issued under this Part, he (or they, as the case may be) shall have a right of appeal to the superior court pursuant to the provisions of Article 4 of Chapter 150A of the General Statutes. (1967, c. 1068, s. 11; 1973, c. 1262, s. 23; 1975, c. 842, s. 4; 1977, c. 878, s. 6.)

Editor's Note. — The 1975 amendment designated the existing section as subsection (b) and added subsection (a).

The 1977 amendment substituted "Article 4 of Chapter 150A" for "Article 33 of Chapter 143" near the end of subsection (b).

§ 143-215.34. Investigations by Department; rules and regulations; employment of consultants. — The Department shall make such investigations and assemble such data as it deems necessary for a proper review and study of the design and construction of dams, reservoirs and appurtenances, and for such purposes may enter upon private property. The Environmental Management Commission may adopt such rules and regulations as may be necessary to carry out the purposes of this Part. The Department may employ or make such agreements with geologists, engineers, or other expert consultants and such assistants as it deems necessary to carry out the provisions of this Part. (1967, c. 1068, s. 12; 1973, c. 1262, s. 23.)

§ 143-215.35. Liability for damages. — No action shall be brought against the State of North Carolina, the Department, or the Environmental Management Commission or any agent of the Commission or any employee of the State or the Department for damages sustained through the partial or total failure of any dam or its maintenance by reason of any supervision or other action taken pursuant to or under this Part. Nothing in this Part shall relieve an owner or operator of a dam from the legal duties, obligations and liabilities arising from such ownership or operation. (1967, c. 1068, s. 13; 1973, c. 1262, s. 23.)

§ 143-215.36. Enforcement procedures. — (a) Criminal Penalties. — Any person who shall be adjudged to have violated this Article shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each violation. In addition, if any person is adjudged to have committed such violation willfully, the court may determine that each day during which such violation continued constitutes a separate violation subject to the foregoing penalty.

(b) Civil Penalties. —

(1) The Environmental Management Commission may assess a civil penalty of not less than one hundred dollars ($100.00) nor more than two hundred fifty dollars ($250.00) against any person who violates any provisions of, or any order issued pursuant to this Part, or who violates any duly adopted regulation of the Commission or its predecessor implementing the provisions of this Part.

(2) If any action or failure to act for which a penalty may be assessed under this Part is willful, the Commission may assess a penalty not to exceed two hundred fifty dollars ($250.00) per day for each day of violation.

(3) In determining the amount of the penalty, the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4) Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development within 30 days after receipt of notice, the Commission may request the Attorney General to institute a civil action in the superior court of the county or counties in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Commission's action (which shall include a review of the amount of the assessment) shall be as provided in G.S. 150A-51.

(c) Injunctive Relief. — Upon violation of any of the provisions of, or any order issued pursuant to this Part, or duly adopted regulation of the Commission or its predecessor implementing the provisions of this Part, the Secretary of the Department of Natural Resources and Community Development may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of the same. (1967, c. 1068, s. 14; 1973, c. 1262, s. 23; 1975, c. 842, s. 3; 1977, c. 771, s. 4.)

Editor's Note. — The 1975 amendment substituted "Criminal Penalties" for "Penalties for Violations" at the beginning of subsection (a), added present subsection (b), redesignated former subsection (b) as present subsection (c) and rewrote that subsection.

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (b)(4) and in two places in subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.37. Rights of investigation, entry, access, and inspection. — The Commission shall have the right to direct the conduct of such investigations as it may reasonably deem necessary to carry out its duties prescribed in this Part, and the Department shall have the right to conduct such investigations, and for this purpose the employees of the Department and agents of the Commission have the right to enter at reasonable times on any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam or associated equipment facility or property, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the construction or operation of any dam: Provided, that no person shall be required to disclose any secret formula, processes or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. (1967, c. 1068, s. 15; 1973, c. 1262, s. 23.)

Part 4. Federal Water Resources Development Projects.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.38. Short title. — This Part shall be known as and may be cited as the Federal Water Resources Development Law of 1969. (1969, cc. 724, 968.)

Authority of the State, Counties, Municipalities and Local Government Units to Contract with the Secretary of the Army for Water Resources Projects. — See opinion of Attorney General to Major General R.H. Free, Division Engineer, U.S. Army Corps of Engineers, 41 N.C.A.G. 522 (1971).

§ 143-215.39. Public policy. — It is hereby declared the public policy of the State of North Carolina to encourage development of such river and harbor, flood control and other similar civil works projects as will accrue to the general or special benefit of any county or municipality of North Carolina or to any region of the State. To this end, it is also hereby declared that within the meaning of the North Carolina Constitution expenditures for such projects and obligations incurred for such projects are for public purposes, that county and municipal and other local government expenditures and obligations incurred therefor are necessary expenses, and that county expenditures therefor are for special purposes for which the special approval of the General Assembly is hereby given. (1969, cc. 724, 968.)

Editor's Note. — The reference to the Constitution in this section is to the Constitution adopted in 1868, as amended.

§ 143-215.40. Resolutions and ordinances assuring local cooperation. — (a) The boards of commissioners of the several counties, in behalf of their respective counties, the governing bodies of the several municipalities, in behalf of their respective municipalities, the governing bodies of any other local government units, in behalf of their units, and the North Carolina Environmental Management Commission, in behalf of the State of North Carolina, subject to the approval of the Governor and the Advisory Budget Commission, are hereby authorized to adopt such resolutions or ordinances as may be required giving assurances to any appropriate agency of the United States government for the fulfillment of the required items of local cooperation as expressed in acts of Congress or congressional documents, as conditions precedent to the accomplishment of river and harbor, flood control or other such civil works projects, when it shall appear, and is determined by such board or governing body that any such project will accrue to the general or special benefit of such county or municipality or to a region of the State. In each case where the subject of such local cooperation requirements comes before a board of county commissioners or the governing body of any municipality or other local unit a copy of its final action, whether it be favorable or unfavorable, shall be sent to the Secretary of Natural Resources and Community Development for the information of the Governor.

(b) Within the meaning of this Part, a "local government unit" means any local subdivision or unit of government or local public corporate entity (other than a county or municipality), including any manner of special district or public authority. (1969, cc. 724, 968; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" near the end of subsection (a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.41. Items of cooperation to which localities and the State may bind themselves. — Such resolutions and ordinances may irrevocably bind such county, municipality, other local unit, or the State of North Carolina, acting through the Environmental Management Commission, to the following when included as requirements of local cooperation for a federal water resources development project:

(1) To provide, without cost to the United States, all lands, easements, and rights-of-way required for construction and subsequent maintenance of the project and for aids to navigation, if required, upon the request of the Chief of Engineers, or other official to be required in the general public interest for initial and subsequent disposal of spoil, and also necessary retaining dikes, bulkheads, and embankments therefor, or the costs of such retaining works;

(2) To hold and save the United States free from damages due to the construction works and subsequent maintenance of the project;

(3) To provide firm assurances that riverside terminal and transfer facilities will be constructed at the upper limit of the modified project to permit transfer of commodities from or to plants and barges;

(4) To provide and maintain, without cost to the United States, depths in berthing areas and local access channels serving the terminals commensurate with depths provided in related project areas;

(5) To accomplish, without cost to the United States, such alterations, if any, as required in sewer, water supply, drainage, electrical power lines, and other utility facilities, as well as their maintenance;

(6) To provide, without cost to the United States, all lands, easements, rights-of-way, utility relocations and alterations, and, with the

concurrence and under the direction of the Board of Transportation, highway or highway bridge construction and alterations necessary for project construction;

(7) To adjust all claims concerning water rights;

(8) To maintain and operate the project after completion, without cost to the United States, in accordance with regulations prescribed by the Secretary of the Army or other responsible federal official, board, or agency;

(9) To provide a cash contribution for project costs assigned to project features other than flood control;

(10) To prevent future encroachment which might interfere with proper functioning of the project for flood control;

(11) To provide or satisfy any other items or conditions of local cooperation as stipulated in the congressional or other federal document covering the particular project involved.

This section shall not be interpreted as limiting but as descriptive of the items of local cooperation, the accomplishment of which counties, municipalities and the State are herein authorized to irrevocably bind themselves; it being intended to authorize counties, municipalities and the Environmental Management Commission in behalf of the State to comply fully and completely with all of the items of local cooperation as contemplated by Congress and as stipulated in the congressional acts or documents concerned, or project reports by the Army Chief of Engineers, the Administrator of the Soil Conservation Service, the Board of Directors of the Tennessee Valley Authority, or other responsible federal official, board or agency. (1969, cc. 724, 968; 1973, c. 507, s. 5; c. 1262, s. 23; c. 1446, s. 14.)

§ 143-215.42. Acquisition of lands. — (a) For the purpose of complying with the terms of local cooperation as specified in Chapter 143, Article 21, Part 4, and as stipulated in the congressional document covering the particular project involved, any county, municipality, other local government unit or the State of North Carolina, acting on behalf of the Environmental Management Commission, may acquire the necessary lands, or interest in lands, by lease, purchase, gift or condemnation. A municipality, county or other local government unit may acquire such lands by any of the aforesaid means outside as well as inside its territorial boundaries, if the local governing body finds that substantial benefits will accrue to property inside such territorial boundaries as a result of such acquisition.

(b) The power of condemnation herein granted to counties, municipalities and other local government units may be exercised only after:

(1) The municipality, county or other local unit makes application to the Environmental Management Commission, identifying the land sought to be condemned and stating the purposes for which said land is needed; and

(2) The Environmental Management Commission finds that the land is sought to be acquired for a proper purpose within the intent of Chapter 143, Article 21, Part 4. The findings of the Environmental Management Commission will be conclusive in the absence of fraud, notwithstanding any other provision of law.

(c) The Department of Natural Resources and Community Development shall certify copies of the Commission's findings to the applicant municipality, county, or other local unit, and to the clerk of superior court of the county or counties wherein any of the land sought to be condemned lies for recordation in the special proceedings thereof.

(d) For purposes of this section:

(1) The term "interest in land" means any land, right-of-way, rights of access, privilege, easement, or other interest in or relating to land. Said

"interest in land" does not include an interest in land which is held or used in whole or in part for a public water supply, unless such "interest in land" is not necessary or essential for such uses or purposes.

(2) A "description" of land shall be sufficient if the boundaries of the land are described in such a way as to convey an intelligent understanding of the location of the land. In the discretion of the applicant, boundaries may be described by any of the following methods or by any combination thereof: by reference to a map; by metes and bounds; by general description referring to natural boundaries, or to boundaries of existing political subdivisions or municipalities, or to boundaries of particular tracts or parcels of land.

(e) The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in General Statutes Chapter 40, Article 2, and all acts amendatory thereof.

(f) Interests in land acquired pursuant to this section may be used in such manner and for such purpose as the condemning authority deems best. If the local government unit so determines, such lands may be sold, leased, or rented, subject to the prior approval of the Environmental Management Commission. The State may sell, lease or rent any lands acquired by it, and if the Environmental Management Commission is participating with any local government unit or units in a water resources project under this Article, may convey such lands or interests to the unit or units as a part of its participation therein.

(g) This section is intended to confer supplementary and additional authority, and not to confer exclusive authority nor to impose cumulative requirements. If a municipality, county or other local government unit is authorized to acquire lands or interests in lands by some other law (such as by General Statutes Chapter 139, 153, 160, or 162A) as well as by this section, compliance with the requirements of this section or the requirements of such other law will be sufficient.

(h) This section shall not authorize acquisition by condemnation of interests in land within the boundaries of any project to be constructed by the Tennessee Valley Authority, its agents or subdivision or any project licensed by the Federal Power Commission or interests in land owned or held for use by a public utility, as defined in G.S. 62-3. No commission created pursuant to G.S. 158-8 shall condemn or acquire any property to be used by the Tennessee Valley Authority, its agents or subdivision. (1969, cc. 724, 968; 1973, c. 621, ss. 2-4; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Chapter 153, referred to in subsection (g) of this section, was repealed by Session Laws 1973, c. 822. See now Chapter 153A. The major part of Chapter 160 has also been repealed. See now Chapter 160A.

§ 143-215.43. Additional powers. — For the purpose of complying with requirements of local cooperation as described in this Part, county and municipal governing bodies shall also have the power to accept funds, and to use general tax funds for necessary project purposes, including project maintenance. (1969, cc. 724, 968.)

Part 5. Right of Withdrawal of Impounded Water.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other

Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.44. Right of withdrawal. — (a) A person who lawfully impounds water for the purpose of withdrawal shall have a right of withdrawal of excess volume of water attributable to the impoundment. Within the meaning of this subsection, the word "purpose" shall include one of several purposes in a multiple purpose impoundment.

(b) A "right of withdrawal," within the meaning of this Part, is an interest which establishes a right to withdraw an excess volume of water superior to other interests in the water.

(c) "Excess volume of water," within the meaning of this Part, is that volume which may be withdrawn from an impoundment or from a watercourse below the impoundment without foreseeably reducing the rate of flow of a watercourse below that which would obtain in that watercourse if the impoundment did not exist.

(d) "Impound," within the meaning of this Part, shall include but is not limited to financial contributions or the assurance of financial contributions in the construction or operation of an impoundment.

(e) A "person," within the meaning of this Part, is any and all persons, including (but not limited to) individuals, firms, partnerships, associations, public or private institutions, municipalities or counties or local government units (as defined in G.S. 143-215.40(b)), governmental agencies, or private or public corporations organized under the laws of this State or any other state or country. (1971, c. 111, s. 1.)

§ 143-215.45. Transfer of right of withdrawal. — A person with a right of withdrawal may assign or transfer it in whole or in part to another, subject to those rights of reassignment or transfer by the State specified in G.S. 143-354(11). A person who has a right of withdrawal of excess volume of water by virtue of an assignment or transfer has an interest in water superior to other interests only to the extent that his withdrawal is in accordance with the terms of the assignment or transfer. (1971, c. 111, s. 1.)

§ 143-215.46. Exercise of right of withdrawal. — A person may exercise right of withdrawal by withdrawing directly from the impoundment, from a watercourse below the impoundment, or from both; provided, however, that the exercise of the right of withdrawal shall not require any person other than the holder of said right to incur additional capital expenditures in order to enable the holder of said right to withdraw any excess volume of water from a watercourse below the impoundment. (1971, c. 111, s. 1.)

§ 143-215.47. Effect of right of withdrawal on discharges of water. — Neither a right of withdrawal nor any assignment or transfer of said right may be asserted in defense against a claim that the method of releasing or discharging water is improper, that the quality of water has been impaired by the withdrawal or release of the water or by its return to the stream following its use, that water has been diverted without authority from the basin from which it was withdrawn, or that water resulting from augmentation of the natural streamflow to control water quality has been withdrawn. (1971, c. 111, s. 1.)

§ 143-215.48. Determining streamflows. — (a) In litigation in which the rate of flow of water that would exist in the absence of an impoundment is in issue, that rate shall be deemed to be the minimum average flow for a period of seven consecutive days that have an average recurrence of once in 10 years unless a party to the litigation introduces a calculation that more closely approximates the actual rate. A determination made by the Environmental Management Commission (i) of either that minimum average flow, or (ii) that adopts a calculation that more closely approximates the actual rate of flow, and introduced by one of the parties to the litigation, shall be prima facie correct.

(b) The Environmental Management Commission is authorized to make the determinations specified in subsection (a) of this section and to require the submission of such reports and such inspections as are necessary to permit those determinations. (1971, c. 111, s. 1; 1973, c. 1262, s. 23.)

§ 143-215.49. Right of withdrawal for use in community water supply. — A person operating a municipal, county, community or other local water distribution or supply system and having a right of withdrawal may assert that right when its withdrawal is for use in any such water system as well as in other circumstances. (1971, c. 111, s. 1.)

§ 143-215.50. Interpretation with other statutes. — Whether rights of withdrawal shall have effect in a capacity use area declared by the Environmental Management Commission under the Water Use Act of 1967 shall be in the discretion of the Environmental Management Commission. This Part shall be subject to the provisions of the Water and Air Resources Act, and the Dam Safety Law of 1967. (1971, c. 111, s. 1; 1973, c. 1262, s. 23.)

Part 6. Floodway Regulation.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.51. Preamble. — The purpose of this Part is to specify means for regulation of artificial obstructions in floodways. It is hereby declared that the channel and a portion of the floodplain of all the State's streams will be designated as a floodway, in which artificial obstructions may not be placed except in accordance with the provisions of this Part. The purpose of designating these areas as a floodway is to help control and minimize the extent of floods by preventing obstructions which inhibit water flow and increase flood height and damage, and thereby to prevent and minimize loss of life, injuries, property damage and other losses (both public and private) in flood hazard areas, and to promote the public health, safety and welfare of citizens of North Carolina in flood hazard areas. (1971, c. 1167, s. 3; 1973, c. 621, s. 5.)

§ 143-215.52. Definitions. — As used in this Part, unless the context otherwise requires:

(1) "Artificial obstruction" means any obstruction which is not a natural obstruction, including any which, while not a significant obstruction in

itself, is capable of accumulating debris and thereby reducing the flood-carrying capacity of the stream.

(2) "Floodway" means that portion of the channel and floodplain of a stream designated to provide passage for the 100-year flood, without increasing the elevation of that flood at any point by more than one foot.

(3) "Local government" means any county or municipal corporation.

(4) "Natural obstruction" includes any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause.

(5) "Stream" means a watercourse that collects surface runoff from an area of one square mile or greater. This does not include flooding due to tidal or storm surge on estuarine or ocean waters. (1971, c. 1167, s. 3.)

§ 143-215.53. Artificial obstruction prohibited. — The placement of any artificial obstruction in the floodway of any stream after the floodway has been delineated pursuant to G.S. 143-215.56 is hereby prohibited, except as set forth in G.S. 143-215.54, unless a permit has been obtained for such artificial obstruction from the responsible local government. No damageable portion of a structure located outside the floodway may be below the elevation that would be attained by the 100-year flood if the stream were contained within the floodway. (1971, c. 1167, s. 3.)

§ 143-215.54. Floodway uses. — (a) Local governments are empowered to grant permits for the use of the floodways consistent with the purposes of this Part.

(b) The following uses may be made of floodways as a matter of right without a permit issued under this Part:

(1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses.

(2) Loading areas, parking areas, rotary aircraft ports, and other similar industrial-commercial uses.

(3) Lawns, gardens, parking, play areas, and other similar uses.

(4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, swimming pools, hiking or horseback-riding trails, open space and other similar private and public recreational uses.

(5) Streets, bridges, overhead utility lines, railway lines and rights-of-way, creek and storm drainage facilities, sewage or waste treatment plant outlets, water supply intake structures, and other similar public, community or utility uses.

(6) Temporary facilities (for a specified number of days), such as displays, circuses, carnivals, or similar transient amusement enterprises.

(7) Boat docks, ramps, piers, or similar structures.

(8) Dams. (1971, c. 1167, s. 3; 1973, c. 621, s. 8.)

§ 143-215.55. Existing artificial obstructions. — Artificial obstructions existing in a floodway on July 1, 1971, shall not be considered to be in violation of this Part. However, they may not be enlarged or replaced in part or in whole, without a permit, as provided by this Part in the case of a proposed artificial obstruction. Local governments are empowered to acquire, by purchase, exchange, or condemnation such existing artificial obstructions if deemed necessary by the responsible local government for the purpose of avoiding flood damages. The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in G.S. Chapter 40, Article 2, and all acts amendatory thereof. (1971, c. 1167, s. 3.)

§ 143-215.56. Delineation of floodway; powers of Environmental Management Commission and Department of Natural Resources and Community Development; powers of local governments. — (a) For the purpose of delineating the floodway and evaluating the possibility of flood damages, responsible local governments are empowered to:

(1) Request technical assistance from the competent federal agencies, including the Army Corps of Engineers, the Soil Conservation Service, the Tennessee Valley Authority, and the U.S. Geological Survey, or successor agencies, and

(2) Utilize the reports and data supplied by federal and State agencies as the basis for the exercise by local ordinance or resolution of the powers and responsibilities conferred on responsible local governments by this Part.

(b) The Department of Natural Resources and Community Development shall be empowered to render advice and assistance to any local government having responsibilities under this Part. In exercising this function it shall specifically be authorized to furnish manuals, suggested standards, plans, and other technical data; to conduct training programs; and to give advice and assistance with respect to handling of particular applications; but it shall not be limited to such activities. In the exercise of its powers to adopt rules and regulations interpreting and applying the provisions of this Part, the Environmental Management Commission may adopt (but is not limited to adopting) regulations interpreting any of the terms used in this Part, including regulations supplementing the definitions provided in this Part. A copy of every regulation adopted by the Environmental Management Commission interpreting or applying the provisions of this Part, shall be filed by the Department of Natural Resources and Community Development with the chairman of the governing body of each county and municipality within the State, as well as with the Attorney General as required by Chapter 150A of the General Statutes.

(c) A local government may delineate any floodway subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies. The Environmental Management Commission may delineate a floodway, in the same manner and subject to the same requirement, when the reach of a stream in which a floodway is determined by the Environmental Management Commission to be needed exceeds the jurisdiction of a single local government. Alterations in the lines delineated shall be indicated by appropriate entries upon or addition to such map or description. Such entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed or other copies of such map or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. A local government or the Environmental Management Commission may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or maps which it is designated to replace upon the filing and approval thereof as designated and provided above.

(d) If the Environmental Management Commission determines that the floodway of any stream or stream segment should be delineated and the use thereof controlled as provided in this Part, and the local governments within which the stream or segment lies have not delineated the floodway or controlled uses therein, the Environmental Management Commission shall advise the local governments of its intent to delineate the floodway, and it shall be the responsibility of the local governments to control uses therein. At least 30 days prior to the effective date specified in the resolution of the Environmental

Management Commission establishing any floodway, notice of the effective date and copies of such rules and regulations shall be delivered to every affected local government along with copies of all maps and plans delineating the floodway. Public notice of the resolution shall be given at least 30 days prior to the effective date by publication of a notice once a week for two successive weeks in a newspaper or newspapers having general circulation in the county or counties in which each affected local government lies and by posting a copy of the notice at the courthouse of each such county, along with a sketch map showing the stream or stream segment affected. The notice shall be adequate to apprise all interested persons of the nature of the rules and regulations, the effective date thereof, the stream or stream segment affected, and the manner in which more detailed information may be secured. (1971, c. 1167, s. 3; 1973, c. 621, ss. 6, 7; c. 1262, s. 23; 1977, c. 374, s. 2; c. 771, s. 4.)

Editor's Note. — The first 1977 amendment substituted "Attorney General as required by Chapter 150A of the General Statutes" for "Secretary of State as required by G.S. 143-195" at the end of subsection (b).

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and last sentences of subsection (b).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.57. Procedures in issuing permits. — (a) Responsible local governments are empowered to establish application forms and require such maps, plans, and other information as necessary for the issuance of permits in a manner consonant with the objectives of this Part. They shall consider the effects of a proposed artificial obstruction in a floodway in creating danger to life and property

(1) By water which may be backed up or diverted by such obstruction;

(2) By the danger that the obstruction will be swept downstream to the injury of others; and

(3) By the injury or damage at the site of the obstruction itself.

For this purpose they may take into account anticipated development in the foreseeable future which may be adversely affected by the obstruction, as well as existing development.

(b) In prescribing standards and requirements for the issuance of permits under this Part, and in issuing such permits, responsible local governments shall proceed as in the case of an ordinance for the better government of the county or municipality, as the case may be. A municipality may exercise the powers granted in this Part not only within its corporate boundaries but also within the area of its extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any place within the county outside the zoning jurisdiction of any municipalities in the county. The county may regulate territory within the zoning jurisdiction of any municipality whose governing body, by resolution, agrees to such regulation; provided, however, that any such municipal governing body may, upon one year's written notice, withdraw its approval of the county regulations, and those regulations shall have no further effect within the municipality's jurisdiction.

(c) The local governing body is hereby empowered to adopt such regulations as it may deem necessary concerning the form, time, and manner of submission of applications for permits under this Part. Such regulations may provide for the issuance of permits under this Part by the local governing body or by such agency as may be designated by said body, as prescribed by the governing body. Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury trial at the election of the party seeking review. The time and manner of election of a jury trial shall be governed by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of any such appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this Part. (1971, c. 1167, s. 3.)

§ 143-215.58. Violations and penalties. — (a) Any violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part shall constitute a misdemeanor.

(b) Failure to remove any artificial obstruction or enlargement or replacement thereof, that violates this Part or any ordinance adopted (or the provision of any permit issued) under the authority of this Part, shall constitute a separate violation of this Part for each 10 days that such failure continues after written notice from the county or municipal governing body.

(c) In addition to or in lieu of other remedies, the county or municipal governing body may institute any appropriate action or proceeding to restrain or prevent any violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part, or to require any person, firm or corporation which has committed any such violation to remove a violating obstruction or restore the conditions existing before the placement of the obstruction. (1971, c. 1167, s. 3.)

§ 143-215.59. Other approvals required. — (a) The granting of a permit under the provisions of this Part shall in no way affect any other type of approval required by any other statute or ordinance of the State or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.

(b) No permit for the construction of any structure to be located within a floodway shall be granted by a political subdivision unless the applicant has first obtained the permit required by this Part. (1971, c. 1167, s. 3.)

§ 143-215.60. Liability for damages. — No action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this Part shall be brought against the State or any political subdivision of the State, or their employees or agents. (1971, c. 1167, s. 3.)

§ 143-215.61. Floodplain management. — The provisions of this Part shall not preclude the imposition by responsible local governments of land use controls and other regulations in the interest of floodplain management for the floodplain or the floodway. (1971, c. 1167, s. 3.)

Part 6A. Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.62. Revolving fund established; conditions and procedures. — (a) There is established under the control and direction of the North Carolina Department of Natural Resources and Community Development a Hurricane Flood Protection and Beach Erosion Control Project Revolving Fund, to consist of any moneys that may be appropriated for use through the fund by the General Assembly or that may be made available to it from any other source for the purpose of financing the local portion of the nonfederal share of the cost of hurricane flood protection and beach erosion control projects. The Department of Natural Resources and Community Development shall, when funds are available, and in accordance with priorities established by the Environmental Management Commission, make advances from the fund to any county or municipality for:

(1) Advance planning and engineering work necessary or desirable in order to promote the development, construction, or preservation of hurricane flood protection and beach erosion works or projects;

(2) Construction of hurricane flood protection and beach erosion control works or projects, or other related costs which are a responsibility of local government, including costs associated with construction, such as the acquisition of land or rights-of-way or the relocation of public roads and utilities;

(3) Maintenance and nourishment of the constructed works or project.

Such advances shall be subject to repayment by the recipient to the Department of Natural Resources and Community Development from the proceeds of bonds or other obligations for the beach erosion control and hurricane flood protection works or projects, or from other funds available to the recipient, including grants.

(b) Prior to making any advance to a county or municipal government the Environmental Management Commission shall advise the county or municipal government:

(1) Its opinion as to whether or not the projected works or project would further beach erosion control or provide protection to life or property from floodwaters resulting from hurricanes;

(2) Its opinion as to whether or not there is a reasonable prospect of federal aid in the financing of the projected works or project and whether or not the advance will exceed the local portion of the nonfederal share of the cost of the works or project to be financed by the county or municipality making the application;

(3) Its opinion as to whether or not the anticipated financial outlays in connection with the projected works or project for the county or municipality making the application would constitute an unreasonable burden on the citizens of the county or municipality.

The Environmental Management Commission shall authorize no advance to a county or municipal government without first receiving satisfactory assurances from such government that the projected works or project shall be undertaken and the funds advanced repaid as provided herein.

(c) Repayment of any advance may be in equal installments or in a lump sum, but the term for such repayment shall not exceed a term of 10 years. All moneys received from repayments on advances shall be paid into the revolving fund and shall be used for the purposes set forth in this section.

(d) The Environmental Management Commission may adopt such rules and regulations with respect to making application as are consistent with the terms and purposes of this section. (1971, c. 1159, s. 1; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment, in subsection (a), substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and second sentences of the introductory paragraph and in subdivision (3).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 7. Water and Air Quality Reporting.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.63. Short title. — This Part shall be known and may be cited as the Water and Air Quality Reporting Act of 1971. (1971, c. 1167, s. 9.)

§ 143-215.64. Purpose. — The purpose of this Part is to require all persons who are subject to the provisions of G.S. 143-215.1 to file reports with the Environmental Management Commission covering the discharge of waste and air contaminants to the waters and outdoor atmosphere of the State and to establish and maintain approved systems for monitoring the quantity and quality of such discharges and their effects upon the water and air resources of the State. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

§ 143-215.65. Reports required. — All persons subject to the provisions of G.S. 143-215.1 who discharge wastes to the waters or emit air contaminants to the outdoor atmosphere of this State shall file at such frequencies as the Commission may specify and at least quarterly reports with the Environmental Management Commission setting forth the volume and characteristics of wastes discharged or air contaminants emitted daily or such other period of time as may be specified by the Environmental Management Commission in its official regulations. Such reports shall be filed on forms provided by the Department and approved by the Environmental Management Commission and shall include such pertinent data with reference to the total and average volume of wastes or air contaminants discharged, the strength and amount of each waste substance or air contaminant discharged, the type and degree of treatment such wastes or air contaminants received prior to discharge and such other information as may be specified by the Environmental Management Commission in its official regulations. The information shall be used by the Environmental Management Commission only for the purpose of air and water pollution control. The Department shall provide proper and adequate facilities and procedures and the Commission shall adopt adequate regulations to safeguard the confidentiality of proprietary manufacturing processes except that confidentiality shall not extend to wastes discharged or air contaminants emitted. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23; 1975, c. 655, s. 4.)

Editor's Note. — The 1975 amendment substituted "at such frequencies as the Commission may specify and at least quarterly reports" for "monthly reports" near the beginning of the first sentence.

§ 143-215.66. Monitoring required. — In order to provide for adequately monitoring the discharge of wastes to the waters and the emission of contaminants to the outdoor atmosphere and their effects upon the quality of the environment, all persons subject to the provisions of G.S. 143-215.1 who cause such discharges or emissions shall establish and maintain adequate water and air quality monitoring systems and report the data obtained therefrom to the Environmental Management Commission. Each monitoring system shall include the collection of water or air quality data as appropriate from such locations, in such detail, and with such frequency as shall be reasonably required by the Environmental Management Commission, in its official regulations, for evaluating the efficiency of treatment facilities or air-cleaning devices and the effects of the discharges or emissions upon the waters and air resources of the State. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

§ 143-215.67. Acceptance of wastes to disposal systems and air-cleaning devices. — No person subject to the provisions of G.S. 143-215.1 shall willfully cause or allow the discharge of any wastes or air contaminants to a waste-disposal system or air-cleaning device in excess of the capacity of the disposal system or cleaning device or any wastes or air contaminants which the disposal system or cleaning device cannot adequately treat. (1971, c. 1167, s. 9.)

§ 143-215.68. Rules and regulations. — The Environmental Management Commission is hereby specifically authorized to adopt appropriate report forms and such rules and regulations as deemed necessary for the implementation of this Part. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23.)

§ 143-215.69. Enforcement procedures. — (a) Criminal Penalties. — Any person who violates any provisions of this Part or any regulations adopted by the Environmental Management Commission for its implementation shall be guilty of a misdemeanor and shall be liable to a penalty of not less than one hundred dollars ($100.00), nor more than one thousand dollars ($1,000) for each violation and each day such person shall fail to comply after having been officially notified by the Environmental Management Commission shall constitute a separate offense subject to the foregoing penalty.

(b) Civil Penalties. — The Environmental Management Commission may assess civil penalties as provided in G.S. 143-215.6 and 143-215.114.

(c) Injunctive Relief. — Upon violation of any of the provisions of, or any order issued pursuant to this Part, or duly adopted regulation of the Commission or its predecessor implementing the provisions of this Part, the Secretary of the Department of Natural Resources and Community Development may, either before or after the institution of proceedings for the collection of the penalty imposed by this Part for such violations, request the Attorney General to institute a civil action in the superior court of the county or counties where the violation occurred in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or require corrective action, and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Part for any violation of same.

(d) Judicial Review. — Appeal from a final order or decision of a hearing officer or the Commission shall be as provided in G.S. 143-215.5. (1971, c. 1167, s. 9; 1973, c. 1262, s. 23; 1975, c. 842, s. 5; 1977, c. 771, s. 4.)

Editor's Note. — The 1975 amendment designated the existing provisions as subsection (a), added "Criminal Penalties" at the beginning of that subsection and added subsections (b) through (d).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places in the first sentence of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§§ 143-215.70 to 143-215.74: Reserved for future codification purposes.

ARTICLE 21A.

Oil Pollution Control.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

Part 1. General Provisions.

§ 143-215.75. Title. — This Article shall be known and may be cited as the "Oil Pollution Control Act of 1973." (1973, c. 534, s. 1.)

§ 143-215.76. Purpose. — It is the purpose of this Article to promote the health, safety, and welfare of the citizens of this State by protecting the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products. It is not the intention of this Article to exercise jurisdiction over any matter as to which the United States government has exclusive jurisdiction, nor in any wise contrary to any governing provision of federal law, and no provision of this Article shall be so construed. The General Assembly further declares that it is the intent of this Article to support and complement applicable provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251, et seq., as amended, and the National Contingency Plan for removal of oil adopted pursuant thereto. (1973, c. 534, s. 1.)

§ 143-215.77. Definitions. — As used in this Article, unless the context otherwise requires:

(1) "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.

(2) "Environmental Management Commission" shall mean the North Carolina Environmental Management Commission.

(3) "Secretary" shall mean the North Carolina Secretary of Natural Resources and Community Development.

(4) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil into waters, or upon land in such proximity to waters that oil is reasonably likely to reach the waters, but shall not include discharges in amounts determined by the Environmental Management Commission to be not harmful to the public health or welfare (including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches); provided, however, that this Article shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil, oil-based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person on agricultural, horticultural, or forestry crops, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge.

(5) "Having control over oil" shall mean, but shall not be limited to, any person using, transferring, storing, or transporting oil immediately prior to a discharge of such oil onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil.

(6) "Land" shall mean only land from which it is reasonably likely that oil will flow into the waters of this State.

(7) "Department" shall mean the Department of Natural Resources and Community Development.

(8) "Oil" shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.

(9) "Oil bailee" shall mean any person who accepts oil to hold in trust for another for a special purpose and for a limited period of time.

(10) "Oil carrier" shall mean any person who engages in the transportation of oil for compensation.

(11) "Oil terminal facility" shall mean any facility of any kind and related appurtenances located in, on or under the surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A vessel shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another vessel to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or is used to store oil.

(12) "Operator" shall mean any person owning or operating an oil terminal facility or pipeline, whether by lease, contract, or any other form of agreement.

(13) "Person" shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(14) "Pipeline" shall mean any conduit, pipe or system of pipes, and any appurtenances related thereto and used in conjunction therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.

(15) "Restoration" or "restore" shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.

(16) "Transfer" shall mean the transportation, on-loading or off-loading of oil between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.

(17) "Vessel" shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and shall include, but shall not be limited to, barges and tugs; provided that the term "vessel" as used herein shall not apply to any pleasure, sport or commercial fishing vessel which has a fuel capacity of less than 500 gallons and is not used to transport petroleum, petroleum products, or general cargo.

(18) "Waters" shall mean any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway or any

other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction. (1973, c. 534, s. 1; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivisions (3) and (7).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.78. Oil pollution control program. — The Department shall establish within the office an oil pollution control program for the administration of this Article. The Department may employ and prescribe the duties of employees assigned to this activity. (1973, c. 534, s. 1; c. 1262, s. 23.)

§ 143-215.79. Inspections and investigations; entry upon property. — The Environmental Management Commission, through its authorized representatives, is empowered to conduct such inspections and investigations as shall be reasonably necessary to determine compliance with the provisions of this Article; to determine the person or persons responsible for violation of this Article; to determine the nature and location of any oil discharge to the land or waters of this State; and to enforce the provisions of this Article. The authorized representatives of the Environmental Management Commission are empowered upon presentation of their credentials to enter upon any private or public property, including boarding any vessel, for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil discharges or to perform any restoration necessitated by an oil discharge. Neither the State nor its agencies, employees or agents shall be liable in trespass or damages arising out of the conduct of any inspection, investigation, or oil removal or restoration project or activity other than liability for damage to property or injury to persons arising out of the negligent or willful conduct of an employee or agent of the State during the course of an inspection, investigation, project or activity. (1973, c. 534, s. 1; c. 1262, s. 23.)

§ 143-215.80. Confidential information. — Any information relating to a secret process, device or method of manufacturing or production discovered or obtained in the course of an inspection, investigation, project or activity conducted pursuant to this Article shall not be revealed except as may be required by law or lawful order or process. (1973, c. 534, s. 1.)

§ 143-215.81. Authority supplemental. — The authority and powers granted under this Article shall be in addition to, and not in derogation of, any authority or powers vested in the Environmental Management Commission under any other provision of law, except to the extent that such other powers or authority may conflict directly with the powers and authority granted under this Article; and the Environmental Management Commission is empowered to adopt such rules and regulations as are necessary to administer and carry out the purposes of this Article. (1973, c. 534, s. 1; c. 1262, s. 23.)

§ 143-215.82. Local ordinances. — Nothing in the Article shall be construed to deny any county, municipality, sanitary district, metropolitan sewerage district or other authorized local governmental entity, by ordinance, regulation or law, from exercising police powers with reference to the prevention and control of oil discharges to sewers or disposal systems. (1973, c. 534, s. 1.)

Part 2. Oil Discharge Controls.

§ 143-215.83. Discharges. — (a) Unlawful Discharges. — It shall be unlawful, except as otherwise provided in this Part, for any person to discharge, or cause to be discharged, oil into or upon any waters, tidal flats, beaches, or lands within this State, or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person having control over the oil, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

(b) Excepted Discharges. — This section shall not apply to discharges of oil in the following circumstances:

(1) When the discharge was authorized by an existing regulation of the Environmental Management Commission.

(2) When any person subject to liability under this Article proves that a discharge was caused by any of the following:

  a. An act of God.

  b. An act of war or sabotage.

  c. Negligence on the part of the United States government or the State of North Carolina or its political subdivisions.

  d. An act or omission of a third party, whether any such act or omission was or was not negligent.

  e. Any act or omission by or at the direction of a law-enforcement officer or fireman.

(c) Permits. — Any person who desires or proposes to discharge oil onto the land or into the waters of this State shall first make application for and secure the permit required by G.S. 143-215.1. Application shall be made pursuant to the rules and regulations adopted by the Environmental Management Commission. Any permit granted pursuant to this subsection may contain such terms and conditions as the Environmental Management Commission shall deem necessary and appropriate to conserve and protect the land or waters of this State and the public interest therein. (1973, c. 534, s. 1; c. 1262, s. 23.)

§ 143-215.84. Removal of prohibited discharges. — (a) Person Discharging. — Any person having control over oil discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Environmental Management Commission.

(b) Removal by Department. — Notwithstanding the requirements of subsection (a) of this section, the Department is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by other cooperating State or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil discharged onto the land or into the waters of the State and to perform any necessary restoration. The Secretary shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the State's personnel and for use of the State's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public interest or public property, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. section 1251 et seq.

(c) The Secretary of the Department of Transportation is authorized and empowered, after consultation with the Secretary of Natural Resources and Community Development, to purchase and equip a sufficient number of trucks designed to carry out the provisions of subsection (b). These trucks shall be maintained by the Department of Transportation and shall be strategically located at various locations throughout the State so as to furnish a ready response when word of an oil discharge has been received. The Secretary of the Department of Natural Resources and Community Development or his designee will, after consultation, decide where the trucks are to be located.

(d) The Secretary of the Department of Transportation and the Secretary of the Department of Natural Resources and Community Development or their designees shall prepare rules and regulations and develop procedures for the placement of these trucks and shall determine the manner and way in which they are to be used. The Secretary of the Department of Natural Resources and Community Development shall reimburse the Department of Transportation for expenses incurred by the Department of Transportation during cleanups as provided in G.S. 143-215.88. (1973, c. 534, s. 1; c. 1262, s. 23; 1975, c. 885; 1977, c. 771, s. 4.)

Editor's Note. — The 1975 amendment, effective July 1, 1975, added subsections (c) and (d).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places in subsections (c) and (d).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.85. Required notice. — Every person owning or having control over oil discharged in violation of the provisions of this Article, upon notice that such discharge has occurred, shall immediately notify the Department, or any of its agents or employees, of the nature, location and time of the discharge and of the measures which are being taken or are proposed to be taken to contain and remove the discharge. The agent or employee of the Department receiving the notification shall immediately notify the Secretary of Natural Resources and Community Development or such member or members of the permanent staff of the Department as the Secretary may designate. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 771, s. 4; c. 858, s. 1.)

Editor's Note. — The first 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence.

The second 1977 amendment substituted "Department" for "office" in three places.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.86. Other State agencies. — (a) Cooperative Effort. — The Board of Transportation, the North Carolina Wildlife Resources Commission, and any other agency of this State shall cooperate with and lend assistance to the Environmental Management Commission by assigning to the Environmental Management Commission upon its request personnel, equipment and material to be utilized in any project or activity related to the containment, collection, dispersal or removal of oil discharged upon the land or into the waters of this State.

(b) Planning. — Subsequent to May 16, 1973, and prior to September 1, 1973, designated representatives of the Environmental Management Commission, the Board of Transportation, and the Wildlife Resources Commission and any other agency or agencies of the State which the Environmental Management Commission shall deem necessary and appropriate, shall confer and establish plans and procedures for the assignment and utilization of personnel, equipment and material to be used in carrying out the purposes of this Part. Every State agency involved is authorized to adopt such rules and regulations as shall be necessary to effectuate the purposes of this section.

(c) Accounts. — Every State agency participating in the containment, collection, dispersal or removal of an oil discharge or in restoration necessitated by such discharge, shall keep a record of all expenses incurred in carrying out any such project or activity including the actual services performed by the agency's personnel and the use of the agency's equipment and material. A copy of all records shall be delivered to the Environmental Management Commission upon completion of the project or activity. (1973, c. 507, s. 5; c. 534, s. 1; c. 1262, s. 23.)

Editor's Note. — Pursuant to Session Laws 1973, c. 507, s. 5, "Board of Transportation" has been substituted for "North Carolina State Highway Commission" and "State Highway Commission."

§ 143-215.87. Oil Pollution Protection Fund. — There is hereby established under the control and direction of the Department an Oil Pollution Protection Fund which shall be a nonlapsing, revolving fund consisting of any moneys appropriated for such purpose by the General Assembly or that shall be available to it from any other source. The moneys shall be used to defray the expenses of any project or program for the containment, collection, dispersal or removal of oil discharged to the land or waters of this State or for restoration necessitated by the discharge. In addition to any moneys that shall be appropriated or otherwise made available to it, the fund shall be maintained by fees, charges, penalties or other moneys paid to or recovered by or on behalf of the Department under the provisions of this Part. Any moneys paid to or recovered by or on behalf of the Department as fees, charges, penalties or other payments as damages authorized by this Part shall be paid to the Oil Pollution Protection Fund in an amount equal to the sums expended from the fund for the project or activity. Within the meaning of this section, the word "penalties" means civil penalties and does not include criminal fines or penalties. (1973, c. 534, s. 1; c. 1262, s. 23.)

§ 143-215.88. Payments to State agencies. — Upon completion of any oil removal or restoration project or activity conducted pursuant to the provisions of this Part, each agency of the State that has participated by furnishing personnel, equipment or material shall deliver to the Department a record of the expenses incurred by the agency. The amount of incurred expenses shall be disbursed by the Secretary to each such agency from the Oil Pollution Protection Fund. Upon completion of any oil removal or restoration project or activity, the Secretary shall prepare a statement of all expenses and costs of the project or activity expended by the State and shall make demand for payment upon the person having control over the oil discharged to the land or waters of the State, unless the Environmental Management Commission shall determine that the discharge occurred due to any of the reasons stated in G.S. 143-215.83(b). Any person having control of oil discharged to the land or waters of the State in violation of the provisions of this Part and any other person causing or contributing to the discharge of oil shall be directly liable to the State for the necessary expenses of oil cleanup projects and activities arising from such discharge and the State shall have a cause of action to recover from any or all such persons. If the person having control over the oil discharged shall fail or refuse to pay the sum expended by the State, the Secretary shall refer the matter to the Attorney General of North Carolina, who shall institute an action in the name of the State in the Superior Court of Wake County, or in his discretion, in the superior court of the county in which the discharge occurred, to recover such cost and expenses. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 858, s. 2.)

Editor's Note. — The 1977 amendment substituted "G.S. 143-215.83(b)" for "G.S. 143-215.84(b)" at the end of the third sentence.

§ 143-215.89. Multiple liability for necessary expenses. — Any person liable for costs of cleanup of oil under this Part shall have a cause of action to recover such costs in part or in whole from any other person causing or contributing to the discharge of oil into the waters of the State, including any amount recoverable by the State as necessary expenses. The total recovery by the State for damage to public resources pursuant to G.S. 143-215.91 and for the cost of oil cleanup, arising from any discharge, shall not exceed the applicable limits prescribed by federal law with respect to the United States government on account of any such discharge. (1973, c. 534, s. 1.)

§ 143-215.90. Liability for damage to public resources. — Any person who violates any of the provisions of this Article, or any order, rule or regulation of the Environmental Management Commission adopted pursuant to this Article, or fails to perform any duty imposed by this Article, or violates an order or other determination of the Environmental Management Commission made pursuant to the provisions of this Article, including the provisions of a discharge permit issued pursuant to G.S. 143-215.1, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the State or otherwise causes a reduction in the quality of the waters of the State below the standards set by the Environmental Management Commission, shall be liable to pay the State damages in an amount equal to the sum of money necessary to restock such waters, replenish such resources, or otherwise restore the rivers, streams, bays, tidal flats, beaches, estuaries or coastal waters and public lands adjoining the seacoast to their condition prior to the injury, as such condition is determined by the Environmental Management Commission in conference with the Wildlife Resources Commission, and any other State agencies having an interest affected by such violation (or by the designees of any or all of such boards, commissions and agencies). Such damages shall be recoverable in an action brought by the Attorney General in the name of the State in the superior court of the county in which the damage occurred or in which the violator resides or has his or its principal place of business, as he shall elect; provided, that if damages occurred in more than one county, the Attorney General may bring an action in any of the counties where the damages occurred. Any money so recovered by the Attorney General shall be transferred by the Environmental Management Commission to appropriate funds administered by the State agencies affected by the violation for use in such activities as food fish or shellfish management programs, wildlife and waterfowl management programs, water quality improvement programs and such other uses as may best mitigate the damage incurred as a result of the violation. No action shall be authorized under the provisions of this section against any person operating in compliance with the conditions of a waste discharge permit issued pursuant to G.S. 143-215.1 and the provisions of this Part. (1973, c. 534, s. 1; c. 1262, s. 23.)

§ 143-215.91. Penalties. — (a) Civil Penalties. — Any person who intentionally or negligently discharges oil, or knowingly causes or permits the discharge of oil in violation of this Part or fails to report a discharge as required by G.S. 143-215.85, shall incur, in addition to any other penalty provided by law, a penalty in an amount not to exceed five thousand dollars ($5,000) for every such violation, the amount to be determined by the Environmental Management Commission after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Part as well as G.S. 143-215.1, and such other considerations as the Environmental Management Commission deems appropriate. Every act or omission which causes, aids or abets a violation of this section shall be considered a violation under the provisions of this section and subject to the penalty herein provided. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Environmental Management Commission describing the violation with reasonable particularity and advising such person that the penalty is due. The Environmental Management Commission may, upon written application therefor, received within 15 days, and when deemed in the best interest of the State in carrying out the purposes of this Article, remit or mitigate any penalty provided for in this section or discontinue any action to recover the penalty upon such terms as it, in its discretion, shall deem proper, and shall have the authority to ascertain facts upon all such applications in such manner and under such regulations as the Environmental Management Commission may adopt. If the amount of such penalty is not paid to the Department within 15 days after receipt of notice, or if an application for remission or mitigation has not been made within 15 days as herein provided, and the amount provided in the order issued by the Environmental Management Commission subsequent to such application is not paid within 15 days of receipt thereof, the Attorney General, upon request of the Environmental Management Commission, shall bring an action in the name of the State in the Superior Court of Wake County or of any other county wherein such violator does business, to recover the amount specified in the final order of the Environmental Management Commission. In any such action, the amount of the penalty shall be subject to review by the court. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise in this Article provided. Notification received pursuant to this subsection or information obtained by the exploitation of such notification shall not be used against any person in any criminal case, except as prosecution for perjury or for giving a false statement.

(b) Criminal Penalties. — Any person who intentionally or knowingly or willfully discharges or causes or permits the discharge of oil in violation of this Part shall be guilty of a misdemeanor punishable by imprisonment not to exceed six months or by fine to be not more than ten thousand dollars ($10,000), or by both, in the discretion of the court. No proceeding shall be brought or continued under this subsection for or on account of a violation by any person who has previously been convicted of a federal violation or a local ordinance violation based upon the same set of facts. (1973, c. 534, s. 1; 1973, c. 1262, s. 23.)

§ 143-215.92. Lien on vessel. — Any vessel (other than one owned or operated by the State of North Carolina or its political subdivisions or the United States government) from which oil is discharged in violation of this Part or any regulation prescribed pursuant thereto, shall be liable for the pecuniary penalty and costs of oil removal specified in this Part and such penalty and costs shall constitute a lien on such vessel; provided, however, that said lien shall not attach if a surety bond is posted with the Environmental Management Commission in an amount and with sureties acceptable to the Environmental Management Commission, or a cash deposit is made with the Environmental Management Commission in an amount acceptable to the Environmental Management Commission. Provided further, that such lien shall not have priority over any existing perfected lien or security interest. The Environmental Management Commission may adopt regulations providing for such conditions, limitations, and requirements concerning the bond or deposit prescribed by this section as the Environmental Management Commission deems necessary. (1973, c. 534, s. 1; c. 1262, s. 23.)

§ 143-215.93. Liability for damage caused. — Any person having control over oil which enters the waters of the State in violation of this Part shall be strictly liable, without regard to fault, for damages to persons or property, public or private, caused by such entry, subject to the exceptions enumerated in G.S. 143-215.83(b). (1973, c. 534, s. 1.)

§ 143-215.94. Joint and several liability. — In order to provide maximum protection for the public interest, any actions brought pursuant to G.S. 143-215.88 through 143-215.91(a), 143-215.93 or any other section of this Article, for recovery of cleanup costs or for civil penalties or for damages, may be brought against any one or more of the persons having control over the oil or causing or contributing to the discharge of oil. All said persons shall be jointly and severally liable, but ultimate liability as between the parties may be determined by common-law principles. (1973, c. 534, s. 1; 1977, c. 858, s. 3.)

Editor's Note. — The 1977 amendment substituted "G.S. 143-215.88 through 143-215.91(a), 143-215.93" for "G.S. 143-215.89 through 143-215.92(a), 143-215.94" in the first sentence.

Part 3. Oil Terminal Facilities.

§ 143-215.95. Duties of Secretary of Natural Resources and Community Development. — The Secretary of Natural Resources and Community Development shall administer the provisions for registration of oil terminal facilities contained in this Part. In addition, he shall engage in such study and research concerning oil terminal facilities and their regulation in this State and elsewhere as may be required to furnish the General Assembly with a thorough factual basis for his recommendations for further legislation pursuant to this Part. (1973, c. 534, s. 1; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence.

§ 143-215.96. Oil terminal facility registration. — Prior to November 10, 1973, the owner or operator of every oil terminal facility in the State shall secure a registration certificate from the Secretary of Natural and Economic Resources. Such a certificate shall be issued only where the applicant shall have furnished the following information concerning the oil terminal facility:

(1) Complete name of owner and operator of the oil terminal facility together with addresses and telephone numbers;

(2) Number of employees of the oil terminal facility and the principal officers;

(3) Maps or sketches, based on criteria developed by the Secretary of Natural and Economic Resources to show property lines of the oil terminal facility and location of nearby watercourses or bodies of water as specified by the Secretary; and

(4) Summary of present and proposed procedures, if any, for prevention of oil spills.

The owner or operator of any oil terminal facility which begins operation subsequent to the initial registration date specified in this section shall secure a registration certificate no later than 30 days after beginning operations. (1973, c. 534, s. 1.)

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1977, c. 771, s. 4, which changed the title of the Secretary of Natural and Economic Resources to the Secretary of Natural Resources and Community Development.

§ 143-215.97. Recommendations; regulations. — (a) The Secretary of Natural and Economic Resources shall present recommended further legislation concerning oil pollution to the General Assembly by February 1, 1974. Such recommended legislation may include provisions (i) designating or creating a State agency to regulate oil terminal facilities; (ii) specifying the legal responsibility of oil terminal facilities for prevention of oil spills, and for related measures to protect the public interest; (iii) creating a system of licensing of oil terminal facilities, or such alternative measures as the Secretary deems needful to protect the public interest; and (iv) such other provisions as the Secretary shall deem necessary and appropriate.

(b) The Secretary of Natural Resources and Community Development may adopt and modify from time to time rules and regulations consistent with this Part to implement the provisions of this Part. All such rules and regulations and modifications thereof, shall be filed with the Attorney General as required by Chapter 150A of the General Statutes. (1973, c. 534, s. 1; 1975, 2nd Sess., c. 983, s. 82; 1977, c. 771, s. 4.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted, at the end of subsection (b), "Attorney General as required by Chapter 150A of the General Statutes" for "Secretary of State as required by Article 18 of Chapter 143 of the General Statutes."

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subsection (b).

Because subsection (a) relates to past events, no changes have been made in it pursuant to Session Laws 1977, c. 771, s. 4.

§ 143-215.98. Violations. — Any person who shall be adjudged to have violated any provision of this Part or any rule or regulation of the Secretary of Natural Resources and Community Development adopted hereunder shall be guilty of a misdemeanor, punishable upon conviction by a fine of not exceeding fifty dollars ($50.00) or by imprisonment for not exceeding 30 days or by both such fine and imprisonment. (1973, c. 534, s. 1; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

§ 143-215.99: Repealed by Session Laws 1975, c. 521, s. 1.

Part 4. Oil Refining Facility Permits.

§ 143-215.100. Oil refining facility permits. — No facility which is to be used or is capable of being used for the purpose of refining oil shall be initiated or constructed after July 1, 1975, without a permit from the Secretary of Natural Resources and Community Development. (1975, c. 521, s. 2; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-215.101. Powers of the Secretary. — The Secretary, in addition to any other powers granted under the laws of this State, shall have the power:

(1) To adopt, modify and revoke rules and regulations relating to the issuance of oil refining facility permits. Such rules and regulations may include, but shall not be limited to, the following matters:

  - a. Requirements for submission of engineering reports, plans and specifications for the location and construction of oil terminal facilities.
  - b. Establishment of procedures and methods of reporting discharges and other occurrences prohibited by this Article.
  - c. Establishment of procedures, methods, means, and equipment to be used in the removal of oil pollutants.

(2) To deny the issuance of a permit upon a finding that:
  - a. The installation will have substantial adverse effects on wildlife or on fresh water, estuarine or marine fisheries; or
  - b. The operation of the installation will violate standards of air or water quality promulgated or administered by the Environmental Management Commission; or
  - c. The installation will have a substantial adverse effect on a publicly owned park, forest, or recreation area.

(3) To grant permits for the operation of existing or proposed oil refining facilities and to impose such terms and conditions therein as it shall deem necessary and appropriate to effectuate the purposes of this Article.

(4) To require the installation of such facilities and the employment of such protective measures and operating procedures as are deemed necessary to prevent, insofar as possible, any oil discharges to the waters or lands of the State.

(5) To issue guidelines consistent with the Uniform Administrative Practices Act for the issuance or denial of permits. (1975, c. 521, s. 2.)

§ 143-215.102. Penalties. — (a) Civil Penalty. — Any person who violates any provision of this Part, or any rule, regulation or order made pursuant to this Part, shall incur, in addition to any other penalty provided by law, a civil penalty in an amount not to exceed ten thousand dollars ($10,000) for every such violation, the amount to be determined by the Commission after taking into consideration the gravity of the violation, the previous record of the violator in complying or failing to comply with the provisions of this Article as well as G.S. 143-215.1, and such other considerations as the Commission deems appropriate. The penalty herein provided for shall become due and payable when the person incurring the penalty receives a notice in writing from the Commission describing the violation with reasonable particularity and advising such person that the penalty is due. The Commission may, upon written application therefor, received within 15 days, and when deemed in the best interest of the State in carrying out the purposes of this Article, remit or mitigate any penalty provided for in this section or discontinue any action to recover the penalty upon such terms, as it, in its discretion shall deem proper, and shall have the authority to ascertain facts upon all such applications in such manner and under such regulations as the Commission may adopt. If the amount of such penalty is not paid to the Department of Natural and Economic Resources within 15 days after receipt of notice, or if an application for remission or mitigation has not been made within 15 days as herein provided, the amount provided in the order issued by the Commission subsequent to such application is not paid within 15 days of receipt thereof, the Attorney General, upon request of the Commission, shall bring an action in the name of the State in the Superior Court of Wake County or of any other county wherein such violator resides or does business, to recover the amount specified in the final order of the Commission. In any such action, the amount of the penalty shall be subject to review by the court. In all such actions the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise in this Article provided. Any sums recovered under this subsection shall be payable to the Oil Pollution Protection Fund as established by this Article.

(b) Criminal Penalties. — Any person who intentionally or knowingly or willfully violates any provision of this Part, or any rule, regulation or order made pursuant to this Part shall be guilty of a misdemeanor punishable by imprisonment not to exceed six months or by fine to be not more than ten thousand dollars ($10,000), or both, in the discretion of the court. No proceeding shall be brought or continued under this subsection for or on account of a violation by any person who has previously been convicted of a federal violation or a local ordinance violation based upon the same set of facts. (1975, c. 521, s. 2.)

§§ 143-215.103, 143-215.104: Reserved for future codification purposes.

ARTICLE 21B.

Air Pollution Control.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-215.105. Declaration of policy; definitions. — The declaration of public policy set forth in G.S. 143-211 and the definitions set forth in G.S. 143-213, applicable to the control and abatement of air pollution, shall be applicable to this Article. (1973, c. 821, s. 6.)

Quoted in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-215.106. Administration of air quality program. — The air quality program of the State of North Carolina shall be administered by the Department of Natural Resources and Community Development under the rules, regulations and policies of the North Carolina Environmental Management Commission created pursuant to G.S. 143-214. The Environmental Management Commission shall review and have general oversight and supervision over the creation and administration of local air pollution control programs authorized by this Article. Public hearings on the adoption by the Environmental Management Commission of air quality standards, emission control standards, and classifications for air contaminant sources as well as any proposed revisions in such standards and classifications shall be conducted in accordance with the procedure set forth in subsections (e)(1), (e)(2) and (e)(3) of G.S. 143-214.1. (1973, c. 821, s. 6; c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-215.107. Air quality standards and classifications. — (a) The Environmental Management Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Environmental Management Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

(4) To develop and adopt classifications for use in classifying air contaminant sources, which in the judgment of the Environmental Management Commission may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution and may require reporting for any such class or classes. Such classifications may be for application to the State as a whole or to any designated area of the State, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property. Any person operating or responsible for the operation of air contaminant sources of any class for which the Environmental Management Commission requires reporting shall make reports containing such information as may be required by the Environmental Management Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt such emission control standards as in the judgment of the Environmental Management Commission may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Environmental Management Commission.

(6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.

(b) Criteria for Standards. — In developing air quality and emission control standards, the Environmental Management Commission shall recognize varying local conditions and requirements and may prescribe different standards for different areas as may be necessary and appropriate to facilitate accomplishment of the stated purposes of this Article and Article 21.

(c) Proposed Adoption of Standards and Classifications. — Prior to the adoption by the Environmental Management Commission of air quality standards, emission control standards and classifications for air contaminant sources, and prior to any modification of any such actions previously taken, the Environmental Management Commission shall give notice of its proposed action and shall conduct one or more public hearings with respect to any such proposed action in accordance with the procedure set forth in subsections (e)(1), (e)(2), and (e)(3) of G.S. 143-214.1.

(d) Final Adoption of Air Quality Standards, Emission Control Standards and Classifications for Air Contaminant Sources. — Upon completion of hearings and consideration of submitted evidence and arguments concerning any proposed action by the Environmental Management Commission with respect to the adoption of air quality standards, emission control standards and classifications for air contaminant sources, the Environmental Management Commission shall adopt its final action with respect thereto and shall publish such final action as a part of its official regulations. When final action has been adopted and is published with respect to the aforestated standards and classifications, the Environmental Management Commission shall likewise publish as a part of its official regulations, the effective date for the application of the provisions of G.S. 143-215.108 and G.S. 143-215.109 to persons within the State as a whole or within any designated area of the State.

(e) Environmental Management Commission's Powers to Modify or Revoke. — The Environmental Management Commission is hereby empowered to modify or revoke from time to time any final action previously taken by it pursuant to the provisions of this Part, any such modification or revocation, however, to be subject to the procedural requirements of this Article and Article 21.

(f) In adopting air quality policies, rules, regulations and procedures, the Environmental Management Commission or any other State or local regulatory body shall be guided by the same standards, definitions, considerations and criteria set forth, from time to time, in federal law, rules or regulations for the guidance of federal, state or local agencies administering the Federal Clean Air Program.

It is the intent of the General Assembly that the air quality rules, regulations and procedures promulgated by the Environmental Management Commission or any other State or local regulatory body under the General Statutes of North Carolina shall be no more restrictive than those adopted by the United States Environmental Protection Agency. (1973, c. 821, s. 6; c. 1262, s. 23; 1975, c. 784.)

Editor's Note. — The 1975 amendment added subsection (f).

Adoption of Air Quality Rules, Regulations and Procedures by Commission. — Subsection (f) of this section does not prohibit the Environmental Management Commission from adopting air quality rules, regulations and procedures covering matters on which there are no corresponding EPA regulations. Opinion of Attorney General to Mr. Ronald L. Lindsay, 45 N.C.A.G. 170 (1975).

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-215.108. Control of sources of air pollution; permits required. — (a) After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215.107, no person shall do any of the following things or carry out any of the following activities which contravene or will be likely to contravene such standards until or unless such person shall have applied for and shall have received from the Environmental Management Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Establish or operate any air contaminant source;

(2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;

(4) Enter into a contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.

(b) The Environmental Management Commission shall act upon all applications for permits so as to effectuate the purpose of this section, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air of the State from any additional or enlarged sources.

The Environmental Management Commission shall have the power:

(1) To grant and renew a permit with such conditions attached as the Environmental Management Commission believes necessary to achieve the purposes of this section;

(2) To grant and renew any temporary permit for such period of time as the Environmental Management Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;

(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;

(4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;

(5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit; and

(6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing.

The Environmental Management Commission shall act on all applications for permits as rapidly as possible, but it shall have the power to request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary prior to acting on any application for a permit. Failure of the Environmental Management Commission to take action on an application for a permit within 90 days after all data, plans, specifications and other required information have been furnished by the applicant shall be deemed as approval of such application.

Any person whose application for a permit or renewal thereof is denied or is granted subject to conditions which are unacceptable to such person or whose permit is modified or revoked shall have the right to a hearing before the Environmental Management Commission upon making demand therefor within 30 days following the giving of notice by the Environmental Management Commission as to its decision upon such application. Unless such a demand for a hearing is made, the decision of the Environmental Management Commission on the application shall be final and binding. If demand for a hearing is made, the procedure with respect thereto and with respect to all further proceedings shall be as specified in G.S. 143-215.4 and in any applicable rules of procedure of the Environmental Management Commission. (1973, c. 821, s. 6; c. 1262, s. 23.)

Contravention, or likelihood of contravention, is condition precedent to necessity for permit from the Environmental Management Commission. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-215.109. Control of complex sources. — (a) The Environmental Management Commission shall develop and adopt regulations establishing criteria for controlling the effects of complex sources on air quality. The regulations shall set forth such basic minimum criteria or standards under which the Environmental Management Commission shall approve or disapprove any such construction or modification. The regulations shall further provide for the submission of plans, specifications and such other information as may be necessary for the review and evaluation of proposed or modified complex sources.

(b) If the Environmental Management Commission shall determine that the construction or modification of any complex sources will result in a violation of ambient air quality standards or interfere with the attainment of such standards in any area where an air pollution abatement control program has been established, the Environmental Management Commission shall have authority to disapprove such construction or modification or to approve such construction or modification under such conditions as the Environmental Management Commission shall deem necessary or appropriate.

(c) In adopting the regulations required by this section and in applying such regulations to any complex source, the Environmental Management Commission may conduct such public hearings as it, in its sole discretion, shall deem appropriate, after such notice and pursuant to such procedures as the Environmental Management Commission shall establish in its rules of procedure. (1973, c. 821, s. 6; c. 1262, s. 23.)

§ 143-215.110. Special orders. — (a) Issuance. — The Environmental Management Commission is hereby empowered, after the effective date of standards and classifications adopted pursuant to G.S. 143-215.107, to issue (and from time to time to modify or revoke) a special order or other appropriate instrument, to any person whom it finds responsible for causing or contributing to any pollution of the air within the area for which standards have been established. Such an order or instrument may direct such person to take or refrain from taking such action, or to achieve such results, within a period of time specified by such special order, as the Environmental Management Commission deems necessary and feasible in order to alleviate or eliminate such pollution. The Environmental Management Commission is authorized to enter into consent special orders, assurances of voluntary compliance or other similar documents by agreement with the person responsible for pollution of the air, and such document shall have the same force and effect as a special order of the Environmental Management Commission issued pursuant to hearing.

(b) Procedure. — No special order shall be issued by the Environmental Management Commission (unless issued upon the consent of the person affected thereby) except after a hearing in accordance with the procedural requirements specified in G.S. 143-215.111 and in any applicable rules of procedure of the Environmental Management Commission. Any special order shall be based on and shall set forth the findings of fact resulting from evidence presented at such hearing and shall specify the time within which the person against whom such order is issued shall achieve the results required by the special order.

(c) Appeals. — Any person against whom a special order is issued shall have the right to appeal in accordance with the provisions of G.S. 143-215.5. Unless such appeal is taken within the prescribed time limit, the special order of the Environmental Management Commission shall be final and binding.

(d) Effect of Compliance. — Any person who installs an air-cleaning device for purpose of alleviating or eliminating air pollution in compliance with the terms of, or as result of the conditions specified in, a permit issued pursuant to G.S. 143-215.108, or a special order, consent special order, assurance of voluntary compliance or similar document issued pursuant to this section, or a final decision of the Environmental Management Commission or a court, rendered pursuant to either of said sections, shall not be required to take or refrain from any further action nor be required to achieve any further results under the terms of this or any other State law relating to the control of air pollution, for a period to be fixed by the Environmental Management Commission or court as it shall deem fair and reasonable in the light of all the circumstances after the date such special order, consent special order, assurance of voluntary compliance, other document or decision, or the conditions of such permit become finally effective, if:

(1) The air-cleaning devices result in the elimination or alleviation of air pollution to the extent required by such permit, special order, consent special order, assurance of voluntary compliance, or other document or decision and complies with any other terms thereof; and

(2) Such person complies with the terms and conditions of such permit, special order, consent special order, assurance of voluntary compliance, other document or decision within the time limit, if any, specified therein or as the same may be extended, and thereafter remains in compliance. (1973, c. 821, s. 6; c. 1262, s. 23.)

Editor's Note. — It would seem that the reference in subsection (b) of this section to § 143-215.111 should be to § 143-215.113.

§ 143-215.111. General powers of Environmental Management Commission; auxiliary powers. — In addition to the specific powers prescribed elsewhere in this Article and the applicable general powers prescribed in G.S. 143-215.3, and for the purpose of carrying out its duties, the Environmental Management Commission shall have the power:

(1) To make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of the State and the several areas thereof, and make recommendations to the General Assembly and other appropriate public and private bodies for the control of such air contaminants.

(2) To consult, upon request, with any person proposing to construct, install, or otherwise acquire an air pollution source or air-cleaning device for the control of air contaminants concerning the efficacy of such device, or the air problem which may be related to such source, or device; provided, however, that nothing in any such consultation shall be construed to relieve any person from compliance with this Article and Article 21, rules and regulations adopted pursuant thereto, or any other provision of law.

(3) To encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis, and to provide such local units technical and consultative assistance to the maximum extent possible. (1973, c. 821, s. 6; c. 1262, s. 23.)

§ 143-215.112. Local air pollution control programs. — (a) The Environmental Management Commission is authorized and directed to review and have general oversight and supervision over all existing or proposed local air pollution control programs and to this end shall review and certify such programs as being adequate to meet the requirements of this Article and Article 21 and any applicable standards and rules and regulations adopted pursuant thereto. The Environmental Management Commission shall certify any local program which:

(1) Provides by ordinance or local law for requirements compatible with those imposed by the provisions of this Article and Article 21, and the standards and rules and regulations issued pursuant thereto; provided, however, the Environmental Management Commission upon request of a municipality or other local unit may grant special permission for the governing body of such unit to adopt a particular class of air contaminant regulations which would result in more effective air pollution control than applicable standards, rules, or regulations promulgated by the Environmental Management Commission;

(2) Provides for the adequate enforcement of such requirements by appropriate administrative and judicial process;

(3) Provides for an adequate administrative organization, staff, financial and other resources necessary to effectively and efficiently carry out its programs; and

(4) Is approved by the Environmental Management Commission as adequate to meet the requirements of this Article and any applicable rules and regulations pursuant thereto.

(b) No municipality, county, local board or commission or group of municipalities and counties may establish and administer an air pollution control program unless such program meets the requirements of this section and is so certified by the Environmental Management Commission.

(c) (1) The governing body of any county, municipality, or group of counties and municipalities within a designated area of the State, as defined in this Article and Article 21, subject to the approval of the Environmental Management Commission, is hereby authorized to establish, administer, and enforce a local air pollution control program for the county, municipality, or designated area of the State which includes but is not limited to:

a. Development of a comprehensive plan for the control and abatement of new and existing sources of air pollution;

b. Air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program;

c. An emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere;

d. Adoption, after notice and public hearing, of air quality and emission control standards, or adoption by reference, without public hearing, of any applicable rules, regulations and standards duly adopted by the Environmental Management Commission; and administration of such rules, regulations and standards in accordance with provisions of this section.

e. Provisions for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources;

f. Provision for adequate administrative staff, including an air pollution control officer and technical personnel, and provision for laboratory and other necessary facilities.

(2) Subject to the approval of the Environmental Management Commission as provided in this Article and Article 21, the governing body of any county or municipality may establish, administer, and enforce an air pollution control program by either of the following methods:

a. Establishing a program under the administration of the duly elected governing body of the county or municipality;

b. Appointing an air pollution control board consisting of not less than five nor more than seven members who shall serve for terms of six years each and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms, and the remaining member or members shall be appointed for six-year terms. Where the term "governing body" is referred to in this section, it shall include the air pollution control board. Such board shall have all the powers and authorities granted to any local air pollution control program. The board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board;

c. Appointing an air pollution control board as provided in this subdivision, and by appropriate written agreement designating the local health department or other department of county or municipal government as the administrative agent for the air pollution control board; and

d. Designating, by appropriate written agreement, the local board of health and the local health department as the air pollution control board and agency.

(3) If the Environmental Management Commission finds that the location, character or extent of particular concentrations of population, air contaminant sources, the geographic, topographic or meteorological considerations, or any combinations thereof, are such as to make impracticable the maintenance of appropriate levels of air quality without an area-wide air pollution control program, the Environmental Management Commission may determine the boundaries within which such program is necessary and require such area-wide program as the only acceptable alternative to direct State administration. Subject to the provisions of this section, each governing body of a county or municipality is hereby authorized and empowered to establish by contract, joint resolution, or other agreement with any other governing body of a county or municipality, upon approval by the Environmental Management Commission, an air pollution control region containing any part or all of the geographical area within the jurisdiction of those boards or governing bodies which are parties to such agreement, provided the counties involved in the region are contiguous or lie in a continuous boundary and comprise the total area contained in any region designated by the Environmental Management Commission for an area-wide program. The participating parties are authorized to appoint a regional air pollution control board which shall consist of at least five members who shall serve for terms of six years and until their successors are appointed and qualified. Two members shall be appointed for two-year terms, two shall be appointed for four-year terms and the remaining member or members shall be appointed for six-year terms. A participant's representation on the board shall be in relation to its population to the total population of the region based on the latest official United States census with each participant in the region having at least one representative; provided, that where the region is comprised of less than five counties, each participant will be entitled to appoint members in relation to its population to that of the region so as to provide a board of at least five members. Where the term "governing body" is used, it shall include the governing board of a region. The regional board is hereby authorized to exercise any and all of the powers provided in this section. The regional air pollution control board shall elect a chairman and shall meet at least quarterly or upon the call of the chairman or any two members of the board. In lieu of employing its own staff, the regional air pollution control board is authorized, through appropriate written agreement, to designate a local health department as its administrative agent.

(4) Each governing body is authorized to adopt any ordinances, resolutions, rules or regulations which are necessary to establish and maintain an air pollution control program and to prescribe and enforce air quality and emission control standards, a copy of which must be filed with the Environmental Management Commission and with the clerk of court of any county affected. Provisions may be made therein for the registration of air contaminant sources; for the requirement of a permit to do or carry out specified activities relating to the control of air pollution, including procedures for application, issuance, denial and revocation; for notification of violators or potential violators about requirements or conditions for compliance; for procedures to grant

temporary permits or variances from requirements or standards; for the declaration of an emergency when it is found that a generalized condition of air pollution is causing imminent danger to the health or safety of the public and the issuance of an order to the responsible person or persons to reduce or discontinue immediately the emission of air contaminants; for notice and hearing procedures for persons aggrieved by any action or order of any authorized agent; for the establishment of an advisory council and for other administrative arrangements; and for other matters necessary to establish and maintain an air pollution control program.

(d) (1) Violation of any ordinances, resolutions, rules or regulations duly adopted by a governing body shall constitute a misdemeanor, punishable as provided in G.S. 143-215.114(b).

(2) Each governing body, or its duly authorized agent, may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this Article and Article 21 for any violation of same.

(3) In addition, each governing body is authorized to expend tax funds, nontax funds, or any other funds available to it to finance an air pollution control program and such expenditures are hereby declared to be for a public purpose and a necessary expense.

(4) Any final administrative decision rendered in an air pollution control program of such governing body shall be subject to judicial review as provided by Chapter 150A of the General Statutes, and "administrative agency" or "agency" as used therein shall mean and include for this purpose the governing body of any county or municipality, regional air pollution control governing board, and any agency created by them in connection with an air pollution control program.

(e) (1) If the Environmental Management Commission has reason to believe that a local air pollution control program certified and in force pursuant to the provisions of this section is inadequate to abate or control air pollution in the jurisdiction to which such program relates, or that such program is being administered in a manner inconsistent with the requirement of this Article, the Environmental Management Commission shall, upon due notice, conduct a hearing on the matter.

(2) If, after such hearing, the Environmental Management Commission determines that an existing local air pollution control program or one which has been certified by the Environmental Management Commission is inadequate to abate or control air pollution in the municipality, county, or municipalities or counties to which such program relates, or that such program is not accomplishing the purposes of this Article, it shall set forth in its findings the corrective measures necessary for continued certification and shall specify a reasonable period of time, not to exceed one year, in which such measures must be taken if certification is not to be rescinded.

(3) If the municipality, county, local board or commission or municipalities or counties fail to take such necessary corrective action within the time specified, the Environmental Management Commission shall rescind any certification as may have been issued for such program and shall administer within such municipality, county, or municipalities or counties all of the regulatory provisions of this Article and Article 21.

Such air pollution control program shall supersede all municipal, county or local laws, regulations, ordinances and requirements in the affected jurisdiction.

(4) If the Environmental Management Commission finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local air pollution control authorities or may be more efficiently and economically performed at the State level, it may assume and retain jurisdiction over that class of air contaminant source. Classification pursuant to this subdivision may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(5) Any municipality or county in which the Environmental Management Commission administers its air pollution control program pursuant to subdivision (3) of this subsection may, with the approval of the Environmental Management Commission, establish or resume a municipal, county, or local air pollution control program which meets the requirements for certification by the Environmental Management Commission.

(6) Nothing in this Article and Article 21 shall be construed to supersede or oust the jurisdiction of any local air pollution control program in operation on June 22, 1967; provided that within two years from such date any such program shall meet all requirements of this Article and Article 21 for certification by the Environmental Management Commission as an approved local air pollution control program. Any certification required from the Environmental Management Commission shall be deemed granted unless the Environmental Management Commission takes specific action to the contrary.

(7) Any municipality, county, local board or commission or municipalities or counties or designated area of this State for which a local air pollution control program is established or proposed for establishment may make application for, receive, administer and expend federal grant funds for the control of air pollution or the development and administration of programs related to air pollution control; provided that any such application is first submitted to and approved by the Environmental Management Commission. The Environmental Management Commission shall approve any such application if it is consistent with this Article, Article 21 and other applicable requirements of law.

(8) Notwithstanding any other provision of this section, if the Environmental Management Commission determines that an air pollution source or combination of sources is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to abate such violation, the Environmental Management Commission, upon written notice to the appropriate local governing body, may act on behalf of the State to require any person causing or contributing to the pollution to cease immediately the emission of air pollutants causing or contributing to the violation or may require such other action as it shall deem necessary. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3.)

§ 143-215.113. General provisions as to procedure; appeals. — All hearings provided for in this Article to be conducted by the Environmental Management Commission shall be in accordance with the provisions of G.S. 143-215.4. Appeals from any final order or decision of the Environmental Management Commission shall be pursuant to the provisions of G.S. 143-215.5. (1973, c. 821, s. 6; c. 1262, s. 23.)

§ 143-215.114. Enforcement procedures. — (a) Civil Penalties. —

(1) A civil penalty of not more than five thousand dollars ($5,000) may be assessed against any person who:
  a. Violates any classification, standard or limitation established pursuant to G.S. 143-215.107;
  b. Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;
  c. Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110;
  d. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article;
  e. Refuses access to the Environmental Management Commission or its duly designated representatives to any premises for the purpose of conducting any investigations provided for in this Article; or
  f. Violates any duly adopted regulation of the Environmental Management Commission implementing the provisions of this Article.

(2) If any action or failure to act for which a penalty may be assessed under this subsection is willful, the Environmental Management Commission may assess a penalty not to exceed five thousand dollars ($5,000) per day for so long as the violation continues.

(3) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(4) The Environmental Management Commission, or, if authorized by the Environmental Management Commission, the Department of Natural Resources and Community Development, may assess the penalties provided for in this subsection. Any person assessed shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the Department of Natural Resources and Community Development within 30 days after receipt of notice, or such longer period, not to exceed 180 days, as the Environmental Management Commission may specify, the Environmental Management Commission may institute a civil action in the Superior Court of Wake County to recover the amount of the assessment. In any such civil action, the scope of the court's review of the Environmental Management Commission's action (which shall include a review of the amount of the assessment), shall be as provided in Chapter 150A of the General Statutes.

(b) Criminal Penalties. —

(1) Any person who willfully or negligently violates any classification, standard or limitation established pursuant to G.S. 143-215.107; any term, condition, or requirement of a permit issued pursuant to G.S. 143-215.108 or of a special order or other appropriate document issued pursuant to G.S. 143-215.110 or any regulation of the Environmental Management Commission implementing any of the said section, shall be guilty of a misdemeanor punishable by a fine not to exceed fifteen thousand dollars ($15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars ($200,000) for each period of 30 days during which a violation continues, or by imprisonment not to exceed six months, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other

document filed or required to be maintained under this Article and Article 21, or regulations of the Environmental Management Commission implementing this Article and Article 21, or who falsifies, tampers with, or knowingly renders inaccurate any recording or monitoring device or method required to be operated or maintained under this Article and Article 21 or regulations of the Environmental Management Commission implementing this Article and Article 21, shall be guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000), or by imprisonment not to exceed six months, or by both.

(3) Any person convicted of an offense under either subdivision (1) or subdivision (2) of this subsection following a previous conviction under such subdivision shall be subject to a fine, or imprisonment, or both, not exceeding twice the amount of the fine or twice the term of imprisonment provided in the subdivision under which the second or subsequent conviction occurs.

(4) For purposes of this subsection, the term "person" shall mean, in addition to the definition contained in G.S. 143-213, any responsible corporate or public officer or employee; provided, however, that where a vote of the people is required to effectuate the intent and purpose of this Article by a county, city, town, or other political subdivision of the State, and the vote on the referendum is against the means or machinery for carrying said intent and purpose into effect, then, and only then, this subsection shall not apply to elected officials or to any responsible appointed officials or employees of such county, city, town, or political subdivision.

(c) Injunctive Relief. — Whenever the Department of Natural Resources and Community Development has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of this Article or any regulations adopted by the Environmental Management Commission implementing the provisions of this Article, the Department of Natural Resources and Community Development, either before or after the institution of any other action or proceeding authorized by this Article and Article 21, request the Attorney General to institute a civil action in the name of the State upon the relation of the Department of Natural Resources and Community Development for injunctive relief to restrain the violation or threatened violation and for such other and further relief in the premises as the court shall deem proper. The Attorney General may institute such action in the Superior Court of Wake County, or, in his discretion, in the superior court of the county in which the violation occurred or may occur. Upon a determination by the court that the alleged violation of the provisions of this Article and Article 21 or the regulation of the Environmental Management Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed for violation of this Article. (1973, c. 821, s. 6; c. 1262, s. 23; c. 1331, s. 3; 1975, c. 19, s. 53; c. 842, ss. 6, 7; 1977, c. 771, s. 4.)

Editor's Note. — The first 1975 amendment corrected an error in Session Laws 1973, c. 821, s. 6, by substituting "or" for "of" following "Environmental Management Commission" in paragraph e of subdivision (1) of subsection (a).

The second 1975 amendment designated the former subdivision (a)(3) as present subdivision (a)(4), added present subdivision (a)(3), and substituted the language beginning "fifteen thousand dollars" and ending "which a violation continues" for "twenty-five thousand dollars ($25,000) per day of violation" near the end of subdivision (b)(1).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and third sentences of subdivision (a)(4) and in three places in the first sentence of subsection (c).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

ARTICLE 22.

State Ports Authority.

§§ 143-216 to 143-228.1: Recodified as §§ 143B-452 to 143B-467 by Session Laws 1977, c. 198, s. 9.

ARTICLE 23.

Armories.

§ 143-229: Repealed by Session Laws 1975, c. 604, s. 1.

Cross Reference. — As to present provisions relating to armories, see § 127A-1 et seq.

§§ 143-230, 143-231: Repealed by Session Laws 1973, c. 620, s. 9.

§§ 143-232 to 143-236.1: Repealed by Session Laws 1975, c. 604, s. 1.

ARTICLE 23A.

Stadium Authority.

§§ 143-236.2 to 143-236.28: Repealed by Session Laws 1971, c. 882, s. 2.

ARTICLE 24.

Wildlife Resources Commission.

§ 143-237. Title. — This Article shall be known and may be cited as the North Carolina Wildlife Resources Law. (1947, c. 263, s. 1.)

Cross Reference. — As to Motorboat Committee of the Wildlife Resources Commission and enforcement of the motorboat law by the Commission, see § 75A-3.

State Government Reorganization. — The Wildlife Resources Commission was transferred to the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development) by former § 143A-118, enacted, by Session Laws 1971, c. 864, and repealed by Session Laws 1973, c. 1262, s. 86. For present provisions as to the Department of Natural Resources and Community Development, see § 143B-275 et seq.

Cited in State ex rel. North Carolina Util. Comm'n v. Story, 241 N.C. 103, 84 S.E.2d 386 (1954).

§ 143-238. Definitions. — As used in this Article unless the context clearly requires otherwise:

(1) The word "Commission" shall mean the North Carolina Wildlife Resources Commission.

(2) The word "Director" shall mean the Executive Director of the North Carolina Wildlife Resources Commission.

(3) The terms "wildlife resources" and "wildlife" shall be defined in accordance with the definitions in G.S. 113-129. (1947, c. 263, s. 2; 1965, c. 957, s. 12.)

§ 143-239. Statement of purpose.—The purpose of this Article is to create a separate State agency to be known as the North Carolina Wildlife Resources Commission, the function, purpose, and duty of which shall be to manage, restore, develop, cultivate, conserve, protect, and regulate the wildlife resources of the State of North Carolina, and to administer the laws relating to game, game and freshwater fishes, and other wildlife resources enacted by the General Assembly to the end that there may be provided a sound, constructive, comprehensive, continuing, and economical game, game fish, and wildlife program directed by qualified, competent, and representative citizens, who shall have knowledge of or training in the protection, restoration, proper use and management of wildlife resources. (1947, c. 263, s. 3; 1965, c. 957, s. 13.)

Cross Reference. — For powers and duties of Wildlife Resources Commission as to agents for distribution and sale of hunting, fishing and trapping licenses, see § 113-81.4 et seq.

§ 143-240. Creation of Wildlife Resources Commission; districts; qualifications of members. — There is hereby created the Wildlife Resources Commission of the Department of Natural Resources and Community Development which shall consist of 13 citizens of North Carolina who shall be appointed as is hereinafter provided. The Governor shall appoint one member of the Commission from each of the following geographical districts:

First district to be composed of the following counties: Bertie, Camden, Chowan, Currituck, Dare, Gates, Hertford, Hyde, Martin, Pasquotank, Perquimans, Tyrrell, Washington.

Second district to be composed of the following counties: Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender, Pitt.

Third district to be composed of the following counties: Edgecombe, Franklin, Halifax, Johnston, Nash, Northampton, Vance, Wake, Warren, Wayne, Wilson.

Fourth district to be composed of the following counties: Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, Robeson, Sampson, Scotland.

Fifth district to be composed of the following counties: Alamance, Caswell, Chatham, Durham, Granville, Guilford, Lee, Orange, Person, Randolph, Rockingham.

Sixth district to be composed of the following counties: Anson, Cabarrus, Davidson, Mecklenburg, Montgomery, Moore, Richmond, Rowan, Stanly, Union.

Seventh district to be composed of the following counties: Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Watauga, Wilkes, Yadkin.

Eighth district to be composed of the following counties: Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, McDowell, Mitchell, Rutherford, Yancey.

Ninth district to be composed of the following counties: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Polk, Swain, Transylvania.

The Governor shall appoint two members of the Commission from the State at large. The Lieutenant Governor shall appoint one member of the Commission from the membership of the Senate. The Speaker of the House of Representatives shall appoint one member of the Commission from the membership of the House of Representatives.

Each member of the Commission shall be an experienced hunter, fisherman, farmer, or biologist, who shall be generally informed on wildlife conservation and restoration problems.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or 138-6 as the case may be, which shall be paid from the Wildlife Resources Commission

Fund. (1947, c. 263, s. 4; 1961, c. 737, s. 1½; 1965, c. 859, s. 2; 1971, c. 285; 1977, c. 771, s. 4; c. 906, s. 1.)

Editor's Note. — The 1977 amendment rewrote the first paragraph and added the eleventh and thirteenth paragraphs.

Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Natural and Economic Resources" in the first sentence of this section as amended by Session Laws 1977, c. 906.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Commission to Act by Resolution. — The Wildlife Resources Commission, in the discharge of its important duties in the public interest, can act only by resolution passed in a legal meeting of its members sitting as a commission, which resolution should be recorded in its minutes, and thus become the best evidence of the Commission's actions. State ex rel. North Carolina, Util. Comm'n v. Story, 241 N.C. 103, 84 S.E.2d 386 (1954).

Resolution Authorizing Director to Purchase Lands. — Resolution of the Wildlife Resources Commission authorizing its director to negotiate for the purchase of certain lands and setting up a certain sum in its budget therefor, even if it be construed to authorize the director to actually purchase the lands designated, is not authorization to him to institute proceedings to condemn any part of the lands. Such resolution cannot support a finding that an application for certificate of public convenience and necessity of the acquisition of the land was filed by the Wildlife Resources Commission so as to confer jurisdiction on the Utilities Commission to issue the certificate. State ex rel. North Carolina Util. Comm'n v. Story, 241 N.C. 103, 84 S.E.2d 386 (1954).

§ 143-241. Appointment and terms of office of Commission members; filling of vacancies. — The terms of office of the members of the North Carolina Wildlife Resources Commission who are now serving as members from the State at large shall expire June 30, 1965. The terms of the remaining nine incumbent members of said Commission shall not expire until the end of the terms for which they were appointed.

On the first day of July, 1965 and thereafter, the Governor shall appoint members of the North Carolina Wildlife Resources Commission from the several geographical districts set forth in G.S. 143-240 as follows:

On July 1, 1965, one from each of districts two, five and eight to serve six years each;

On July 1, 1967, one member from each of districts three, six and nine, to serve terms of six years each;

On July 1, 1969, one member from each of districts one, four and seven, to serve terms of six years each.

Thereafter as the terms of office of the members of the Commission from the several districts expire, their successors shall be appointed for terms of six years each.

Vacancies among the membership of the Commission appointed by the Governor from the several districts occurring through expiration of terms of the members of the Commission shall be filled by appointment by the Governor from a list of five names from each wildlife district, recommended and submitted by the adult interested citizens of each respective district. When the term of a member expires, the Director or his designee shall call a meeting of the adult interested citizens in that district not later than 60 days prior to the expiration of such member's term. Such meetings shall be held as near to the geographic center of the district as possible and in a public building. Notice of the meeting shall be given by publication once each week for four successive weeks, the fourth notice appearing at least 10 days prior to the meeting, in a newspaper having general circulation in the district. In addition, notice of the meeting shall be posted at the courthouse door of each county in the district at least 30 days prior to said meeting. At such meeting, the adult interested citizens in attendance shall select, and the Director shall submit to the Governor, a list of five residents and citizens of the district who are well informed on the subject of wildlife conservation and restoration. The Governor shall appoint a successor to the member whose term is about to expire within 60 days following the submission to him by the Director of the list hereinabove referred to and in no event later than July 1.

Meetings of adult interested citizens held pursuant to this section shall be conducted pursuant to Robert's Rules of Order. When the meeting has been called to order, any adult interested citizen may place in nomination the name of an adult resident citizen of the respective district to be considered for nomination. After the nominations have ceased, each adult interested citizen present may vote for one of the nominees. The five receiving the most votes shall be submitted to the Governor.

"Adult interested citizen" as used in this section means any adult interested citizen who is a resident of any county within the district. All members appointed pursuant to this section shall serve until their successors are appointed and qualified.

Members of the Commission appointed from the State at large shall be appointed initially for terms expiring April 1, 1981, and thereafter for terms of four years. Each member of the Commission appointed by the Lieutenant Governor and each member of the Commission appointed by the Speaker of the House of Representatives shall be appointed for a two-year term beginning on July 1, 1977, and on July 1 of each odd-numbered year thereafter and shall serve until his successor is appointed and qualifies. (1947, c. 263, s. 5; 1961, c. 737, s. 1; 1965, c. 859, s. 3; 1973, c. 825, s. 2; 1977, c. 906, s. 2.)

Editor's Note. — The 1977 amendment inserted "among the membership of the Commission appointed by the Governor from the several districts" in the first sentence of the seventh paragraph and added the last paragraph.

Session Laws 1977, c. 906, s. 6, provides: "The terms of the incumbent members of the Commission shall not expire until the end of the terms for which they were appointed. The terms of any officers of the Commission shall be terminated on July 1, 1977."

§ 143-242. Vacancies by death, resignation or otherwise. — Appointments to fill vacancies of gubernatorial appointees on the Commission occurring by reason of death, disability, resignation or otherwise shall be made by the Governor for the balance of the unexpired terms by appointment of a member from the State at large, or from the appropriate district in accordance with the procedure set out in G.S. 143-241. Appointments to fill vacancies of those members of the Commission appointed by the Lieutenant Governor or appointed by the Speaker of the House of Representatives which occur by reason of death, disability, resignation or otherwise shall be made by the appointing authority who originally appointed the member whose death, disability or resignation created the vacancy. The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance. (1947, c. 263, s. 6; 1973, c. 825, s. 3; 1977, c. 906, s. 3.)

Editor's Note. — The 1977 amendment rewrote all of this section preceding the last sentence, which was formerly the second paragraph of the section.

§ 143-243. Organization of the Commission; election of officers; Robert's Rules of Order. — The Commission shall hold at least two meetings annually in the City of Raleigh, one in January and one in July, and seven members of the Commission shall constitute a quorum for the transaction of business. Additional meetings may be held at such other times and places within the State as may be deemed necessary for the efficient transaction of the business of the Commission. The Commission may hold additional or special meetings at any time at the call of the chairman or on call of any five members of the Commission. The Commission shall determine its own organization and methods of procedure in accordance with the provisions of this Article, and shall have an official seal, which shall be judicially noticed.

At the first scheduled meeting of the Commission after July 1, 1977, and on July 1 of each odd-numbered year thereafter, the Commission shall select from among its membership a chairman and a vice-chairman who shall serve for terms of two years or until their successors are elected and qualified. The Secretary of Natural Resources and Community Development or his designee shall serve as secretary of the Commission.

The chairman shall guide and coordinate the official actions and official activities of the Commission in fulfilling its program responsibility for (1) the appointment and separation of the executive director of the Commission, (2) organizing the personnel of the Commission, (3) setting the statewide policy of the Commission, (4) budgeting and planning the use of the Wildlife and Motorboat Funds, subject to the approval of the Advisory Budget Commission and the legislature, (5) holding public hearings, and (6) adopting regulations as authorized by law. The chairman shall report to and advise the Governor on the official actions and work of the Commission and on all wildlife conservation and boating safety matters that affect the interest of the people of the State.

Meetings of the Commission shall be conducted pursuant to Robert's Rules of Order. (1947, c. 263, s. 7; 1973, c. 825, s. 4; 1977, c. 771, s. 4; c. 906, s. 4.)

Editor's Note. — The 1977 amendment divided this section into paragraphs, substituted "seven" for "five" in the first sentence and "five" for "three" in the third sentence of the first paragraph, rewrote the second paragraph, and added the third paragraph.

Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Natural and Economic Resources" in the second paragraph of the section as amended by Session Laws 1977, c. 906.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-244. Location of offices. — The Board of Public Buildings and Grounds shall provide the Commission with offices in the city of Raleigh, North Carolina. (1947, c. 263, s. 8.)

§ 143-245: Repealed by Session Laws 1977, c. 906, s. 5.

§ 143-246. Executive Director; appointment, qualifications, duties, oath of office, and bond. — The North Carolina Wildlife Resources Commission as soon as practicable after its organization shall select and appoint a competent person qualified as hereinafter set forth as Executive Director of the North Carolina Wildlife Resources Commission. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Commission and shall serve as the chief administrative officer of the said Commission. Subject to the approval of the Commission and the Director of the Budget, he is hereby authorized to employ such clerical and other assistants as may be deemed necessary. The person selected as Executive Director shall have had training and experience in conservation, protection and management of wildlife resources. The salary of such Director shall be fixed by the Governor subject to the approval of the Advisory Budget Commission, and said Director shall be allowed actual expenses incurred while on official duties away from resident headquarters; said salary and expenses to be paid from the Wildlife Resources Fund subject to the provisions of the Executive Budget Act. The term of office of the Executive Director shall be at the pleasure of the Commission. Before entering upon the duties of his office, the Executive Director shall take the oath of office as prescribed for public officials and shall execute and deposit with the State Treasurer a bond in the sum of ten thousand dollars ($10,000), to be approved by the State Treasurer, said bond to be conditioned upon the faithful performance of his duties of office. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. The said Executive Director shall be clothed and vested with all powers, duties, and responsibilities heretofore exercised by the Commission of Game and Inland Fisheries relating to wildlife resources. (1947, c. 263, s. 10; 1957, c. 541, s. 17; 1969, c. 844, s. 5.)

Cross Reference. — As to duties respecting hunting and fishing license agents, see § 113-81.8.

Editor's Note. — Because the last sentence of this section relates to past events, no change has been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 143-247. Transfer of powers, duties, jurisdiction, and responsibilities. —All duties, powers, jurisdiction, and responsibilities now vested by statute in and heretofore exercised by the Department of Conservation and Development, the Board of Conservation and Development, the Director of Conservation and Development, the Division of Game and Inland Fisheries, the Commissioner of Game and Inland Fisheries, or any predecessor organization, board, commission, commissioner or official relating to or pertaining to the wildlife resources of North Carolina, subject to the provisions of Subchapter IV of Chapter 113 of the General Statutes, are hereby transferred to and vested by law in the North Carolina Wildlife Resources Commission hereby created, subject to the provisions of this Article. The powers, duties, jurisdiction, and responsibilities hereby transferred shall be vested in the Commission immediately upon its organization under the provisions of this Article. Provided however, that no provision of this Article shall be construed as transferring to or conferring upon the North Carolina Wildlife Resources Commission, herein created, jurisdiction over the administration of any laws regulating the pollution of streams or public waters in North Carolina. (1947, c. 263, s. 11; 1965, c. 957, s. 14.)

Cross Reference. — As to power to acquire land for game farms or game refuges, see note to § 113-84. For powers and duties of Wildlife Resources Commission as to agents for distribution and sale of hunting, fishing and trapping licenses, see § 113-81.4 et seq.

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development).

§ 143-247.1. Commission may accept gifts. — The Wildlife Resources Commission is hereby authorized and empowered to accept gifts, donations or contributions from any source, which funds shall be held in a separate account and used solely for the purposes of wildlife conservation and management. Such funds shall be administered by the Wildlife Resources Commission and shall be used for wildlife conservation and management in a manner consistent with wildlife conservation management principles. (1971, c. 388.)

§ 143-247.2. Contributions for nongame wildlife. — The Wildlife Resources Commission is hereby authorized to issue and sell appropriate emblems by which to identify recipients thereof as contributors to a special wildlife conservation fund which shall be held and accounted for as a separate part of the Wildlife Resources Fund and which shall be made available to the Wildlife Resources Commission for conservation, protection, enhancement, preservation and perpetuation of nongame wildlife species and those species which may be endangered or threatened with extinction. The special wildlife conservation fund will be audited by the State Auditor. Emblems of different size, shape, type or design may be used to recognize contributions in different amounts, but no such emblem shall be issued for a contribution amounting in value to less than five dollars ($5.00). (1975, c. 77.)

§ 143-248. **Transfer of lands, buildings, records, equipment, and other properties.** — There is hereby transferred to the North Carolina Wildlife Resources Commission all lands, buildings, structures, records, reports, equipment, vehicles, supplies, materials, and other properties, and the possession and use thereof, which have heretofore been acquired or obtained and now remain in the possession of, or which are now and heretofore have been used or intended for use by the Department of Conservation and Development, the Director of Conservation and Development, the Division of Game and Inland Fisheries, and the Commission of Game and Inland Fisheries, and any predecessor organization or division or official of either, for the purpose of protecting, propagating, and developing game, fur-bearing animals, game fish, inland fisheries, and all other wildlife resources which heretofore have been used or held by them in connection with any program conducted for said purposes, whether said lands or properties were acquired, purchased, or obtained by deed, gift, grant, contract, or otherwise; the said lands and other properties hereby transferred, subject to the limitations hereinafter set forth to the said Wildlife Resources Commission shall be held and used by it subject to the provisions of this Article and other provisions of law in furtherance of the intents, purposes, and provisions of this Article and other provisions of law in such manner and for such purposes as may be determined by the Commission. In the event that there shall arise any conflict in the transfer of any properties or functions as herein provided, the Governor of the State is hereby authorized and empowered to issue such executive order, or orders, as may be necessary clarifying and making certain the issue, or issues, thus arising: Provided, further, nothing herein contained shall be construed to transfer any of the State parks or State forests to the North Carolina Wildlife Resources Commission: Provided, further, title to the property transferred by virtue of the provisions of this Article shall be held by the State of North Carolina for the use and benefit of the North Carolina Wildlife Resources Commission and the use, control and sale of any of such property shall be governed by the general law of the State affecting such matters. (1947, c. 263, s. 12; 1965, c. 957, s. 15.)

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development).

Cited in Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567 (1976).

§ 143-249. **Transfer of personnel.** — Upon July 1, 1947, the Division of Game and Inland Fisheries of the North Carolina Department of Conservation and Development shall cease to exist and all employees of said Division shall continue as employees of the Commission at their option or until further action by the Commission. (1947, c. 263, s. 13.)

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development).

§ 143-250. **Wildlife Resources Fund.** — All moneys in the game and fish fund or any similar State fund when this Article becomes effective shall be credited forthwith to a special fund in the office of the State Treasurer, and the State

Treasurer shall deposit all such moneys in said special fund, which shall be known as the Wildlife Resources Fund.

All unexpended appropriations made to the Department of Conservation and Development, the Board of Conservation and Development, the Division of Game and Inland Fisheries or to any other State agency for any purpose pertaining to wildlife and wildlife resources shall also be transferred to the Wildlife Resources Fund.

On and after July 1, 1947, all moneys derived from hunting, fishing, trapping, and related license fees, exclusive of commercial fishing license fees, and all funds thereafter received from whatever sources shall be deposited to the credit of the Wildlife Resources Fund and made available to the Commission until expended subject to the provisions of this Article. The Wildlife Resources Fund herein created shall be subject to the provisions of the Executive Budget Act, Chapter 143, Article 1 of the General Statutes of North Carolina as amended, and the provisions of the Personnel Act, Chapter 143, Article 2 of the General Statutes of North Carolina as amended.

All moneys credited to the Wildlife Resources Fund shall be made available to carry out the intent and purposes of this Article in accordance with plans approved by the North Carolina Wildlife Resources Commission, and all such funds are hereby appropriated, reserved, set aside and made available until expended, for the enforcement and administration of this Article.

In the event any uncertainty should arise as to the funds to be turned over to the North Carolina Wildlife Resources Commission the Governor shall have full power and authority to determine the matter and his recommendation shall be final and binding to all parties concerned. (1947, c. 263, s. 14; 1965, c. 957, s. 16.)

Editor's Note. — Article 2 of this Chapter was repealed by Session Laws 1965, c. 640. See now §§ 126-1 through 126-12.

Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development).

§ 143-251. Cooperative agreements. — In furtherance of the purposes of this Article the Commission is hereby authorized and empowered to enter into cooperative agreements pertaining to the management and development of the wildlife resources with federal, State, and other agencies, or governmental subdivisions. (1947, c. 263, s. 15.)

§ 143-252. Article subject to Chapter 113. — Nothing in this Article shall be construed to affect the jurisdictional division between the North Carolina Wildlife Resources Commission and the Department of Natural and Economic Resources contained in Subchapter IV of Chapter 113 of the General Statutes, or in any way to alter or abridge the powers and duties of the two agencies conferred in that Subchapter. (1947, c. 263, s. 16; 1965, c. 957, s. 17; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

§ 143-253. Jurisdictional questions. — In the event of any questions arising between the Department of Natural and Economic Resources and the North Carolina Wildlife Resources Commission as to any duty or responsibility or authority imposed upon either of said bodies by law, or in case of any conflicting rules or regulations or administrative practices adopted by said bodies, such questions or matters shall be determined by the Governor of the State and his determination shall be binding on each of said bodies. (1947, c. 263, s. 17; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

§ 143-254. Conflicting laws; regulations of Department continued. — All laws and clauses of laws in conflict with the provisions of this Article are hereby modified and amended so as to conform with the provisions of this Article; and all laws and clauses of laws pertaining to the wildlife resources, as herein defined, not in conflict with the provisions thereof are to remain and continue in full force and effect.

Provided further, that all rules and regulations now in force with respect to wildlife resources as herein defined, promulgated by the Department of Conservation and Development under Chapter 113 of the General Statutes of North Carolina, shall continue in full force and effect until altered, modified, amended, or rescinded by the Commission created under this Article, or repealed or modified by law. (1947, c. 263, s. 18.)

Editor's Note. — Because the second paragraph of this section relates to past events, no change has been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development).

§ 143-254.1. Assent to act of Congress providing aid in fish restoration and management projects. — Assent is hereby given to the provisions of the act of Congress entitled "An Act to Provide that the United States shall aid the States in Fish Restoration and Management Projects, and for other Purposes," approved August 9, 1950 (Public Law 681, 81st Congress), and the Wildlife Resources Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the Secretary of the Interior thereunder; and no funds accruing to the State of North Carolina from license fees paid by fishermen shall be diverted for any other purpose than the administration of the Wildlife Resources Commission and for the protection, propagation, preservation, and investigation of fish and game.

Nothing in this section shall be construed to prohibit the exercise of any of the powers granted to the Wildlife Resources Commission under the provisions of this Article. (1951, cc. 316, 405.)

§ 143-254.2. Enforcement of local laws. — (a) It shall be the duty and responsibility of the North Carolina Wildlife Resources Commission to enforce all local acts heretofore or hereinafter enacted respecting game animals, fur-bearing animals and birds, including local acts which prohibit or restrict hunting from, to or across public roads and highways and including local acts which prohibit or restrict the taking of specified animals or birds.

Provided, however, that the provisions of this section shall not apply on the lands of the Eastern Band of Cherokee Indians.

(b) The provisions of this section shall not be construed to require the hiring of additional personnel by the North Carolina Wildlife Resources Commission. (1977, c. 120, ss. 1-3.)

ARTICLE 25.

National Park, Parkway and Forests Development Commission.

§§ 143-255 to 143-257: Repealed by Session Laws 1973, c. 1262, s. 86.

Cross Reference. — As to the North Carolina National Park, Parkway and Forests Development Council, see §§ 143B-322 through 143B-324.

§ 143-258. Duties of the Commission.—The Commission shall endeavor to promote the development of that part of the Smoky Mountains National Park lying in North Carolina, the completion and development of the Blue Ridge Parkway in North Carolina, the development of the Nantahala and Pisgah national forests, and the development of other recreational areas in that part of North Carolina immediately affected by the Great Smoky Mountains National Park, the Blue Ridge Parkway, or the Pisgah or Nantahala national forests. It shall be the duty of the Commission to study the development of these areas and to recommend a policy that will promote the development of the entire area generally designated as the mountain section of North Carolina, with particular emphasis upon the development of the scenic and recreational resources of the region, and the encouragement of the location of tourist facilities along lines designed to develop to the fullest these resources in the mountain section. It shall confer with the various departments, agencies, commissions and officials of the federal government and governments of adjoining states in connection with the development of the federal areas and projects named in this section. It shall also advise and confer with the various officials, agencies or departments of the State of North Carolina that may be directly or indirectly concerned in the development of the resources of these areas, but shall not in any manner take over or supplant these agencies in their work in this area, except insofar as expressly provided in this Article in respect to those commissions and agencies provided for in Article 6 of Chapter 113 of the General Statutes of North Carolina, as amended, or Chapter 48 of the Public Laws of 1927, as amended. It shall also advise and confer with the various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall study the need for additional entrances to the Great Smoky Mountains National Park, together with the need for additional highway approaches and connections, and its findings in this connection shall be filed as recommendations with the National Park Service of the federal government, and the Board of Transportation. (1947, c. 422, s. 6; 1973, c. 507, s. 5.)

§§ 143-259, 143-260: Repealed by Session Laws 1973, c. 1262, s. 86.

Cross Reference. — As to the North Carolina National Park, Parkway and Forests Development Council, see §§ 143B-322 through 143B-324.

ARTICLE 25A.

Historic Sites Commission; Historic and Archeological Sites.

§§ 143-260.1 to 143-260.5: Repealed by Session Laws 1955, c. 543, s. 5.

ARTICLE 25B.

State Nature and Historic Preserve Dedication Act.

§ 143-260.6. Short title. — This Article shall be known and may be cited as the State Nature and Historic Preserve Dedication Act. (1973, c. 443, s. 1.)

§ 143-260.7. Purpose. — It is the purpose of this Article to prescribe the conditions and procedures under which properties may be specially dedicated for the purposes enumerated by Article XIV, Sec. 5 of the North Carolina Constitution ("Conservation of Natural Resources"), accepted by the General Assembly for said purposes, and thereby constituted part of the State Nature and Historic Preserve. (1973, c. 443, s. 2.)

§ 143-260.8. Procedures. — (a) Within the meaning of this section:

(1) "Local governing body" means, as the case may be, the board of commissioners of a county, the city council (or equivalent legislative body) of a city, or the board of aldermen or board of commissioners (or equivalent legislative body) of a town.

(2) "Local government" means a county, city or town.

(3) "Properties" include any properties or interest in properties acquired by purchase or gift.

(b) The Council of State may petition the General Assembly to adopt a resolution pursuant to Article XIV, Sec. 5 of the North Carolina Constitution, accepting any properties owned by the State of North Carolina (or proposed for gift to or purchase by the State) and designated in said petition for inclusion in the State Nature and Historic Preserve.

(c) The governing body of any local government, or any combination of two or more such bodies may petition the General Assembly to adopt a resolution pursuant to Article XIV, Sec. 5 of the North Carolina Constitution, accepting any properties owned by said local government (or proposed for gift to or purchase by said local government) and designated in said petition for inclusion in the State Nature and Historic Preserve.

(d) The petition referred to in subsections (a) and (b) of this section shall identify the properties sought to be included in the Preserve. The General Assembly may then by joint resolution accept the designated properties in the Preserve and adoption of said resoluton by the General Assembly shall constitute the special dedication and acceptance of the designated properties in the State Nature and Historic Preserve contemplated by Article XIV, Sec. 5 of the North Carolina Constitution.

(e) In order to provide accessible information to the public concerning the State Nature and Historic Preserve, every resolution accepting properties in the Preserve shall be codified in the General Statutes. A certified copy of every resolution accepting properties in the Preserve shall be transmitted by the Secretary of State to the register of deeds in each county wherein said properties, or any part of them, are located, for filing and indexing in the grantor index.

(f) This Article shall constitute an exclusive procedure only for placing properties in the State Nature and Historic Preserve, and shall not preclude the dedication of properties by other means for purposes identical or similar to those enumerated by Article XIV, Sec. 5 of the North Carolina Constitution.

(g) It is the intent of this Article to complement any applicable provisions of federal and State law and regulations relating to dedication or acceptance of properties for purposes similar to those enumerated by Article XIV, Sec. 5 of the North Carolina Constitution. The Council of State is hereby authorized to adopt rules and regulations to implement the provisions of this Article, including rules and regulations consistent with this Article to comport with applicable federal and State law and regulations. A copy of this Article, and of any such rules or regulations affecting properties owned by local governments shall be filed by the Council of State with the chairman of the local governing body of every county, city and town within 30 days after ratification or adoption as the case may be. (1973, c. 443, s. 3.)

§ 143-260.9. Dedication shall not affect maintenance and improvement of existing structures or facilities. — The dedication of property to the State Nature and Historic Preserve shall not prevent the administering State agency or local governing body from carrying out normal maintenance and improvement of existing structures or facilities that are appropriate to, and consistent with, the purpose for which the property in question was obtained by the State agency or local governing body. (1973, c. 443, s. 4.)

ARTICLE 26.

State Education Commission.

§ 143-261. Appointment and membership; duties. — The Governor of North Carolina is hereby authorized to appoint a commission to be known as the State Education Commission, consisting of 18 members, six of whom shall be selected from educational groups within the State, and 12 of whom shall be selected from the agricultural, business, industrial, and professional life of the State. It shall be the duty of this Commission to study all educational problems to the end that a sound overall educational program may be developed in North Carolina, and to report their findings and make recommendations to the Governor and the General Assembly of 1949. (1947, c. 724, s. 1.)

§ 143-262. Organization meeting; election of officers; status of members. —After their appointment, the Commission shall meet in the office of the Governor of North Carolina not later than the fifteenth of May, 1947, and upon the recommendation of the Governor, elect a chairman and a full-time executive secretary. The secretary may or may not be a member of the Commission. Membership on the Commission herein authorized shall not constitute public office but shall be considered as a commissioner for a special purpose; and the Governor may appoint as ex officio member, or members, on said Commission any public official without violating the provisions of Article XIV, Sec. 7, of the State Constitution. (1947, c. 724, s. 2.)

Editor's Note. — The reference in this section to Art. XIV, § 7, of the State Constitution is to that section in the Constitution of 1868. For present provisions as to dual office holding, see N.C. Const., Art. VI, § 9.

§ 143-263. Comprehensive study of education problems. — This Commission shall make a comprehensive study of organization, administration, finance, teacher education, supervision, curriculum, standardization, consolidation, transportation, buildings, personnel, a merit rating system for teachers, vocational education, and any other problems related to the overall educational program of the State. (1947, c. 724, s. 3.)

§ 143-264. Per diem and travel allowances. — Each member of the Commission shall be entitled to per diem and travel the same as is paid to the State Board of Education, when attending any meeting of the Commission or while engaged in the performance of any duties of the Commission. (1947, c. 724, s. 4.)

§ 143-265. Salary of executive secretary. — The Commission is authorized to set the salary of a full-time executive secretary, with the approval of the Director of the Budget. (1947, c. 724, s. 5.)

§ 143-266. Powers of executive secretary. — The executive secretary of the Commission shall have the authority and power to subpoena witnesses and compel their attendance to testify and/or produce records at any hearing before the Commission, or any committee thereof, under the same provisions of the law as now apply to attendance of witnesses before legislative committees. (1947, c. 724, s. 6.)

ARTICLE 27.

Settlement of Affairs of Certain Inoperative Boards and Agencies.

§ 143-267. Release and payment of funds to State Treasurer; delivery of other assets to Secretary of Administration. — Whenever the statutes creating, or granting authority to, any licensing, regulatory, or examining board or agency have been or are hereafter repealed, or declared unconstitutional or invalid by the Supreme Court of North Carolina, every officer or other person responsible for or having control or custody of any funds, records, equipment or any other assets held or owned by any such board or agency which was theretofore authorized by any such statute to exercise licensing or regulatory powers or conduct examinations in respect to the right to practice any profession or engage in any trade, business, craft or calling, shall forthwith release and deliver all such funds to the State Treasurer of North Carolina, and shall forthwith release and deliver all other assets of every nature whatsoever to the Secretary of Administration for the State of North Carolina. (1949, c. 740, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary of Administration" for "Director of the Division of Purchase and Contract" near the end of the section.

§ 143-268. Official records turned over to Department of Cultural Resources; conversion of other assets into cash; allocation of assets to State agency or department. — The Secretary of Administration shall receive all such assets so delivered and, after they have served their purpose in the liquidation of the affairs of such board or agency, shall turn over all official records of such board or agency to the Department of Cultural Resources to be held pursuant to the statutes relating to such Department. The Secretary of Administration shall proceed to convert all other such assets into cash by public sale to the highest bidder, and shall deposit the net proceeds of any such sale with the State Treasurer: Provided, that the Secretary of Administration, in his discretion, may allocate to any State agency or department, the whole or any part of such assets, the sale of which is not required to discharge the obligations of the board or agency being liquidated. (1949, c. 740, s. 2; 1973, c. 476, s. 48; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary of Administration" for "Director of the Division of Purchase and Contract" in three places.

§ 143-269. Deposit of funds by State Treasurer. — The State Treasurer shall receive all funds delivered to him under this Article and shall deposit the same in a special fund for the account of the board or agency whose affairs are being liquidated, to be held and applied as hereinafter provided. (1949, c. 740, s. 3.)

§ 143-270. Statement of claims against board or agency; time limitation on presentation. — Any person having any claim or cause of action against any board or agency whose affairs are being liquidated under this Article, may present a verified statement of the same to the Secretary of Administration, who shall investigate and approve or disapprove such claim; any claim not presented to the Secretary of Administration within one year from the time such board or agency becomes inoperative by law shall be barred, and no claim shall be approved or paid which is barred by any statute of limitation or any statutory prohibition in respect to the payment of any claim, or the refund of any deposit, dues, assessment, or examination or license fee. (1949, c. 740, s. 4; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary of Administration" for "Director of the Division of Purchase and Contract" in two places.

§ 143-271. Claims certified to State Treasurer; payment; escheat of balance to University of North Carolina. — The Secretary of Administration shall certify to the State Treasurer a schedule of all claims approved or disapproved, and after one year from the time at which the board or agency became inoperative under the law, the State Treasurer shall, out of the funds in his hands for the account of such board or agency, pay all approved claims in full, or if such funds are insufficient for full payment, then he shall equally prorate said claims and make partial payment insofar as funds are available. Should any balance remain in the hands of the Treasurer after the payment of all approved claims, such balance shall escheat and be paid over to the University of North Carolina, to be held in accordance with the statutes governing escheats. (1949, c. 740, s. 5; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary of Administration" for "Director of the Division of Purchase and Contract" near the beginning of the first sentence.

§ 143-272. Audit of affairs of board or agency; payment for audit and other expenses. — Irrespective of the provisions of G.S. 143-271 of this Article, the State Treasurer is specifically authorized, in his discretion, to cause an audit to be made of the affairs of any such board or agency, and to immediately pay the cost of such audit, together with the expenses of transferring records and assets, and other necessary costs of liquidation, out of the first funds coming into his hands for the account of such board or agency. (1949, c. 740, s. 6.)

ARTICLE 28.

Communication Study Commission.

§§ 143-273 to 143-278: Expired.

Editor's Note. — These sections, which were enacted by Session Laws 1949, c. 1077, expired by their own terms June 30, 1953.

ARTICLE 29.

Commission to Study the Care of the Aged and Handicapped.

§ 143-279. Establishment and designation of Commission. — A Commission is hereby established for the study of the problems relating to the care of the aged with especial reference to those failing mentally and the intellectually or physically handicapped of all ages and this Commission shall be known as "the Commission for the Study of Problems of the Care of the Aged and Intellectually or Physically Handicapped." (1949, c. 1211, s. 1.)

§ 143-280. Membership. — The Commission shall consist of one member from the North Carolina Department of Human Resources, one member from the Department of Human Resources, one member from the Department of Human Resources, one member from the boards of county commissioners, one county superintendent of social services, one local health director, one clerk of the superior court. (1949, c. 1211, s. 2; 1957, c. 1357, s. 12; 1963, c. 1166, s. 10; 1969, c. 982; 1973, c. 476, ss. 128, 133, 138.)

Editor's Note.—The 1973 amendment substituted "Department of Human Resources" for "State Board of Health," "State Department of Mental Health," and "State Board of Public Welfare" throughout the General Statutes. The 1973 act has been literally complied with in the section as set out above.

Session Laws 1973, c. 476, s. 10(a), codified as § 143B-10, subsection (a), authorizes the Secretary of Human Resources to "assign or reassign any function vested in him or in his department to any subordinate officer or employee of his department."

§ 143-281. Appointment and removal of members. — The Governor shall appoint the members of this Commission, and may remove any member; he shall not be required to give any reason for the removal of any member. (1949, c. 1211, s. 3.)

§ 143-282. Duties of Commission; recommendations. — This Commission shall study the problems relating to the care of the aged with especial reference to those failing mentally and shall inquire into the methods of meeting and handling this problem in other states. It shall make a similar study of the problem of the care of the feebleminded, with especial attention to the custodial care of intellectually handicapped persons not teachable or trainable. It shall make a study of the problems relating to the care of the physically handicapped with a special reference to those whose physical handicap renders them incapable of self-support and shall inquire into the methods of meeting and handling this problem in other states.

It shall make recommendations to the Governor offering plans for dealing with the problem of the care needed for this group, and means of clarification of the responsibility of the State and respective counties. (1949, c. 1211, s. 4.)

§ 143-283. Compensation. — The members of the Commission shall receive for each day in actual performance of duties under this Article, a per diem of seven dollars ($7.00), and necessary travel and subsistence expenses, to be paid out of the contingency and emergency fund. (1949, c. 1211, s. 5.)

ARTICLE 29A.

Governor's Council on Employment of the Handicapped.

§ 143-283.1. Short title. — This Article may be cited as "The Governor's Council on Employment of the Handicapped Act." (1961, c. 981; 1973, c. 476, s. 179.)

Cross Reference. — As to the organization of the Governor's Council on Employment of the Handicapped, see §§ 143B-412, 143B-413.

§ 143-283.2. Purpose of Article; cooperation with President's Committee. —The purpose of this Article is to carry on a continuing program to promote the employment of the physically, mentally, emotionally, and otherwise handicapped citizens of North Carolina by creating statewide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with all public and private groups and individuals in this field. The Governor's Council shall work in close cooperation with the President's Committee on Employment of the Physically Handicapped to more effectively carry out the purpose of this Article, and with State and federal agencies having responsibilities for employment and rehabilitation of the handicapped. (1961, c. 981; 1973, c. 476, s. 179.)

§ 143-283.3. Celebration of National Employ the Physically Handicapped Week. — The Governor's Council shall, by proclamation, designate the first full week in October of each year as "National Employ the Physically Handicapped Week." The committee shall promote and encourage the holding of appropriate ceremonies throughout the State during said week, the purpose of which ceremonies shall be to enlist public support for and interest in the employment of the physically handicapped. The Governor shall, in his proclamation designating National Employ the Physically Handicapped Week, invite the mayors of all cities, heads of other instrumentalities of government, leaders of industry and business, educational and religious groups, labor, veterans, women, farm, scientific and professional, and all other organizations and individuals having an interest to participate in said ceremonies. (1961, c. 981; 1973, c. 476, s. 179.)

§§ 143-283.4 to 143-283.6: Repealed by Session Laws 1973, c. 476, s. 179.

§ 143-283.7. Funds, expenses and gifts; reports. — There is hereby created in the State treasury a special revolving fund to be known as "Employment of the Handicapped Revolving Fund." The fund shall consist of all moneys received by the Department of Administration, or in behalf of the Department from the United States, any federal or State agency or institution, gifts, contributions, donations and bequests, but not excluding any other source of revenue for the purpose of promoting the employment and rehabilitation of handicapped citizens of North Carolina. The Department of Administration may use said revolving fund to pay the salaries and general expenses of the administrative office, personnel, materials, supplies, equipment, travel; provide awards, citations, scholarships, but not excluding other purposes for the promoting of the employment and rehabilitation of handicapped citizens. All expenditures from said fund shall be subject to the provisions of the Executive Budget Act.

Any moneys remaining in said revolving fund at the end of any fiscal year or biennium shall not revert to the general fund or any other fund but shall continue to remain in said revolving fund to be expended for the purposes of this Article.

The Department of Administration shall accept, hold in trust, and authorize the use of any grant or devise of land, or any donation or bequests of money or other personal property made to the Department, so long as the terms of the grant, donation, bequest or will are carried out. The Department of Administration may invest and reinvest any funds and money, lease, or sell any real or personal property, and invest the proceeds for the purpose of promoting the employment and rehabilitation of the handicapped unless prohibited by the terms of the grant, donation, bequest, gift, or will. If, due to circumstances, the requests of the person or persons, making the grant, donation, bequest, gift, or will cannot be carried out, the Department of Administration shall have the authority to use the remainder thereof for the purpose of this Article. Said funds shall be deposited in the revolving fund to carry out the provisions of this Article. Such gifts, donations, bequests, or grants shall be exempt for tax purposes. The

Department shall report annually to the Governor all moneys and properties received and expended by virtue of this section.

All funds and properties in the hands of the Governor's Executive Committee on July 1, 1973, shall be transferred to the Department of Administration for use in furtherance of the purposes of this Article. (1961, c. 981; 1973, c. 476, s. 179; 1975, c. 19, s. 54; 1977, c. 872, s. 4.)

Cross Reference. — As to appointment, powers and duties, etc., of the Governor's Council on Employment of the Handicapped, see §§ 143B-412, 143B-413.

Editor's Note. — 1975 amendment corrected an error in the 1973 amendatory act by substituting "bequests" for "requests" near the middle of the second sentence of the first paragraph.

The 1977 amendment substituted "Department of Administration" for "Department of Human Resources" throughout the section.

Session Laws 1977, c. 872, s. 3, provides: "The Employment of the Handicapped Fund as created by G.S. 143-283.7, as the same is found in the 1975 Cumulative Supplement to Volume 3C of the General Statutes, and all records, moneys, appropriations, equipment and property connected therewith are transferred from the Department of Human Resources to the Department of Administration."

§ 143-283.8. Governor's Council nonpartisan and nonprofit. — The Governor's Council shall be nonpartisan, nonprofit, and shall not be used for the dissemination of partisan principles, nor for the promotion of the candidacy of any person seeking public office or preferment. (1961, c. 981; 1973, c. 476, s. 179.)

§§ 143-283.9, 143-283.10: Repealed by Session Laws 1973, c. 476, s. 179.

ARTICLE 29B.

Governor's Coordinating Council on Aging.

§§ 143-283.11 to 143-283.23: Repealed by Session Laws 1973, c. 476, s. 173.

Cross Reference. — For provisions as to the Governor's Advisory Council on Aging, see §§ 143B-180, 143B-181.

ARTICLE 29C.

Youth Councils Act.

§§ 143-283.24 to 143-283.30: Repealed by Session Laws 1975, c. 879, s. 30.

Cross Reference. — For present provisions as to youth councils, see §§ 143B-385 through 143B-388.

§ 143-287.31: Repealed by Session Laws 1973, c. 797, s. 1.

§ 143-283.32: Repealed by Session Laws 1975, c. 879, s. 30.

§§ 143-283.33 to 143-283.40: Reserved for future codification purposes.

ARTICLE 29D.

Manpower Council.

§§ 143-283.41 to 143-283.48: Repealed by Session Laws 1975, c. 879, s. 42.

Cross Reference.—As to the North Carolina Employment and Training Council in the Department of Natural Resources and Community Development, see §§ 143B-340, 143B-341.

ARTICLE 30.

Nutbush Conservation Area.

§§ 143-284 to 143-286: Repealed by Session Laws 1973, c. 1262, s. 76.

Cross Reference. — As to the John H. Kerr Reservoir Committee, see §§ 143B-328 through 143B-330.

§ 143-286.1. Nutbush Conservation Area. — The Department of Natural Resources and Community Development is hereby authorized to enter into lease agreements with the proper agencies of the federal government covering the marginal land area of the John H. Kerr Reservoir or so much thereof as may be necessary or desirable in order to develop said area for park purposes and to carry on a program of conservation, forestry development and wildlife protection. The area so obtained shall be known as the Nutbush Conservation Area. The Department of Natural Resources and Community Development is hereby authorized to control and develop the area so leased and to enter into sublease agreements on terms as may be authorized in the original lease agreement. All proceeds obtained from any sublease agreement shall be used exclusively for the further development of the Nutbush Conservation Area. (1953, c. 1312, s. 4; 1963, c. 612, s. 2; 1973, c. 1262, ss. 28, 76; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and third sentences.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§§ 143-287, 143-288: Repealed by Session Laws 1973, c. 1262, s. 76.

§ 143-289. Contributions from certain counties and municipalities authorized; other grants or donations. — The boards of county commissioners of the Counties of Granville, Vance and Warren and the municipalities within these counties are authorized and empowered in their discretion to make annual contributions to the Department of Natural Resources and Community Development for the purpose of defraying the necessary expenses of operation and the Department of Natural Resources and Community Development is authorized and empowered to accept grants or donations from any interested citizens or from any State or federal agency. (1951, c. 444, s. 6; 1973, c. 1262, s. 76; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§§ 143-290, 143-290.1: Repealed by Session Laws 1973, c. 1262, s. 76.

ARTICLE 31.

Tort Claims against State Departments and Agencies.

§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages. — The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Department of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of a negligent act of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of thirty thousand dollars ($30,000). (1951, c. 1059, s. 1; 1953, c. 1314; 1955, c. 400, s. 1; c. 1102, s. 1; c. 1361; 1957, c. 65, s. 11; 1965, c. 256, s. 1; 1967, c. 1206, s. 1; 1971, c. 893, s. 1; 1973, c. 507, s. 5; c. 1225, s. 1; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment substituted "Department of Transportation" for "Board of Transportation" in the first sentence.

For comment on this Article, see 29 N.C.L. Rev. 416.

For note on the right of subrogation under the provisions of this Article, see 32 N.C.L. Rev. 242 (1954). For note on the distinction between intentional and negligent conduct under this Article, see 35 N.C.L. Rev. 564 (1957). For a note on the distinction between nonfeasance and misfeasance under this Article, see 36 N.C.L. Rev. 352 (1958). For note on judicial abrogation of the doctrine of municipal immunity to tort liability, see 41 N.C.L. Rev. 290 (1963). For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

For article on recent developments in North Carolina tort law, see 48 N.C.L. Rev. 791 (1970).

Amendment Effective July 1, 1979. — Session Laws 1977, c. 529, ss. 1, 2, effective July 1, 1979, will amend this section to read as follows:

"**§ 143-291. Industrial Commission constituted a court to hear and determine claims; damages.** — The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against the State Board of Education, the Board of Transportation, and all other departments, institutions and agencies of the State. The Industrial Commission shall determine whether or not each individual claim arose as a result of the negligence of any officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, under circumstances where the State of North Carolina, if a private person, would be liable to the claimant in accordance with the laws of North Carolina. If the Commission finds that there was such negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or authority, which was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages which the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of such damages by the department, institution or agency concerned, but in no event shall the amount of damages awarded exceed the sum of one hundred thousand dollars ($100,000) on account of injury and damage to any one person."

Session Laws 1977, c. 529, s. 3, provides: "This act shall become effective July 1, 1979, and shall apply only to those claims based upon negligence occurring thereafter."

Intention of Article Is to Enlarge Rights and Remedies. — The obvious intention of the General Assembly in enacting the Tort Claims Act was to enlarge the rights and remedies of a person injured by the actionable negligence of an employee of a State agency while acting in the course of his employment. Wirth v. Bracey, 258 N.C. 505, 128 S.E.2d 810 (1963).

But It Authorizes Claims against State Agencies Only. — The only claim authorized by the Tort Claims Act is a claim against the State agency. Wirth v. Bracey, 258 N.C. 505, 128 S.E.2d 810 (1963); Mason v. North Carolina State Hwy. Comm'n, 7 N.C. App. 644, 173 S.E.2d 515 (1970).

The Tort Claims Act embraces claims only against State agencies. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

Strict Construction. — The State Tort Claims Act is in derogation of the sovereign immunity from liability for torts, and the sounder view is that the Act should be strictly construed, and certainly the Act must be followed as written. Floyd v. North Carolina State Hwy. & Pub. Works Comm'n, 241 N.C. 461, 85 S.E.2d 703 (1955); Bailey v. North Carolina Dep't of Mental Health, 2 N.C. App. 645, 163 S.E.2d 652 (1968).

Acts permitting suit, being in derogation of the sovereign right of immunity, are to be strictly construed. Nello L. Teer Co. v. North Carolina State Hwy. Comm'n, 265 N.C. 1, 143 S.E.2d 247 (1965).

Since the Tort Claims Act is in derogation of sovereign immunity it must be strictly construed and the terms must be strictly adhered to. Etheridge v. Graham, 14 N.C. App. 551, 188 S.E.2d 551 (1972).

For comment on the construction of this Article, see 33 N.C.L. Rev. 613 (1955).

Wording in Statute Is Clear. — The wording in the statute is clear, certain and intelligible. Alliance Co. v. State Hosp., 241 N.C. 329, 85 S.E.2d 386 (1955).

Legislative Purpose Ascertained from Wording of Statute. — The legislative intent and purpose in enacting the State Tort Claims Act must be ascertained from the wording of the statute, and the rule of liberal construction cannot be applied to enlarge its scope beyond the meaning of its plain and unambiguous terms. Alliance Co. v. State Hosp., 241 N.C. 329, 85 S.E.2d 386 (1955).

The State Tort Claims Act will be construed to effectuate its purpose to waive the sovereign immunity of the State in those instances in which injury is inflicted through the negligence of a State employee and the injured person is not guilty of contributory negligence, giving the injured party the same right to sue as any other litigant. Lyon & Sons, Inc. v. State Bd. of Educ., 238 N.C. 24, 76 S.E.2d 553 (1953).

Retroactive Effect of Statute. — The Tort Claims Act, c. 1059, Session Laws of 1951, incorporated in this section, was made retroactive as to certain persons named therein. MacFarlane v. North Carolina Wildlife Resources Comm'n, 244 N.C. 385, 93 S.E.2d 557 (1956).

Act Provides Only Remedy against State for Property Damage. — The owner of property cannot maintain an action against the State or any agency thereof in tort for damages to property, except as provided in this Article. Shingleton v. State, 260 N.C. 451, 133 S.E.2d 183 (1963).

Thus, Property Owner Cannot Maintain Action against State to Restrain Tort. — A property owner cannot maintain an action against the State to restrain the commission of a tort. Shingleton v. State, 260 N.C. 451, 133 S.E.2d 183 (1963).

Board of Transportation Is Agency of State. — The North Carolina State Highway Commission (now Department of Transportation) is an agency of the State. It is, therefore, not subject to suit except in the manner provided by statute. It may be sued in tort only as authorized in the Tort Claims Act. Davis v. North Carolina State Hwy. Comm'n, 271 N.C. 405, 156 S.E.2d 685 (1967).

And Is Liable in Tort Only as Provided in Tort Claims Act. — Except as provided in Tort Claims Act, Highway Commission (now Department of Transportation) is not subject to suit in tort. Nello L. Teer Co. v. North Carolina State Hwy. Comm'n, 265 N.C. 1, 143 S.E.2d 247 (1965).

No action, or other proceeding, may be maintained against the State Highway Commission (now Department of Transportation) to recover damages for death or other injury caused by its negligence or other tort, except insofar as that right is conferred by the Tort Claims Act. Ayscue v. North Carolina State Hwy. Comm'n, 270 N.C. 100, 153 S.E.2d 823 (1967).

Prior to the enactment of the Tort Claims Act, the Highway Commission (now Department of Transportation), as an agency or instrumentality of the State, enjoyed immunity to liability for injury or loss caused by the negligence of its employees. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

Power of Industrial Commission to Pass on Claims against Board of Transportation. — The Tort Claims Act empowers the Industrial Commission to pass upon tort claims against the Highway Commission (now Department of Transportation) which "arose as a result of a negligent act" of an agent of the State while acting within the scope of his employment by the State. Davis v. North Carolina State Hwy. Comm'n, 271 N.C. 405, 156 S.E.2d 685 (1967).

Superior Court Lacked Jurisdiction in Action against Department of Agriculture. — The superior court had no jurisdiction over an action for damages against the Department of Agriculture based on the failure of the Commissioner of Agriculture to require a soybean dealer to obtain a permit and to furnish bond, since jurisdiction of tort claims against a State agency has been vested in the Industrial Commission. Etheridge v. Graham, 14 N.C. App. 551, 188 S.E.2d 551 (1972).

Application of Article to Local Units. — The Tort Claims Act, applicable to the State Board of Education and to the State departments and agencies, except as amended by § 143-300.1, does not include local units such as county and city boards of education. Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

This Article has no application with respect to acts of employees of city or county administrative units. McBride v. North Carolina State Bd. of Educ., 257 N.C. 152, 125 S.E.2d 393 (1962).

A county board of education, unless it has duly waived immunity from tort liability, as authorized in § 115-53, is not liable in a tort action or proceeding involving a tort except such liability as may be established under the Tort Claims Act. Huff v. Northampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963); Brown v. Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

A tort claim arising out of a local board of education's negligence in installing unsafe glass at the end of a gymnasium is not an injury of the kind for which an action may be brought against the board under the Tort Claims Act. Clary v. Alexander County Bd. of Educ., 285 N.C. 188, 203 S.E.2d 820 (1974), vacated on other grounds, 286 N.C. 525, 212 S.E.2d 160 (1975).

The State cannot be an absolute insurer of the safety of everyone committed to its custody. Taylor v. Stonewall Jackson Manual Training & Indus. School, 5 N.C. App. 188, 167 S.E.2d 787 (1969).

Recovery Must Be Based on Actionable Negligence of Employee. — Recovery, if any, under the Tort Claims Act, must be based upon the actionable negligence of an employee of such agency while acting within the scope of his employment. Wirth v. Bracey, 258 N.C. 505, 128 S.E.2d 810 (1963); Mason v. North Carolina State Hwy. Comm'n, 7 N.C. App. 644, 173 S.E.2d 515 (1970).

Recovery against the State agency involved must be based upon actionable negligence of an employee of such agency while acting in the scope of his employment. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

Before an award of damages can be made under the Tort Claims Act, there must be a finding of a negligent act by an officer, employee, servant or agent of the State. Taylor v. Stonewall Jackson Manual Training & Indus. School, 5 N.C. App. 188, 167 S.E.2d 787 (1969).

The Industrial Commission is to determine whether a claim brought under the Tort Claims Act arose as the result of a negligent act of an employee of the State under such circumstances that if the defendant were a private person there would be liability. Brooks v. University of N.C., 2 N.C. App. 157, 162 S.E.2d 616 (1968).

Meaning of Employee. — The word "employee" as used in the State Tort Claims Act must be given its ordinary meaning in construing the statute. Alliance Co. v. State Hosp., 241 N.C. 329, 85 S.E.2d 386 (1955).

Thus it appears basically that a claim, to be recognizable within the purview of the Tort Claims Act, must arise "as a result of a negligent act of a State employee while acting within the scope of his employment." Manifestly, the word "employee" in the connection used, means "one who works for wages or salary in the service of an employer." Alliance Co. v. State Hosp., 241 N.C. 329, 85 S.E.2d 386 (1955).

A person employed by a city board of education to do maintenance work in the city school grounds is not an employee of the State, and demurrer of the State Board of Education is properly sustained in proceedings against it under this section to recover for the negligence of such employee in the discharge of his duties. Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

A prisoner detained at a State penal institution is not an employee of the State within the meaning of the State Tort Claims Act, and the State may not be held liable under that statute for negligent injury inflicted by such prisoner while his services are made use of. Alliance Co. v. State Hosp., 241 N.C. 329, 85 S.E.2d 386 (1955).

Employee Is Personally Liable for Negligence. — An employee of the Highway Commission (now Department of Transportation) is personally liable for his own actionable negligence. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

Prior to the enactment of the Tort Claims Act the Highway Commission (now Department of Transportation), as an agency or instrumentality of the State, enjoyed immunity to liability for injury or loss caused by the negligence of its employees. Even so, then as now, an employee of such agency was personally liable for his own actionable negligence. Wirth v. Bracey, 258 N.C. 505, 128 S.E.2d 810 (1963).

There is no inconsistency in respect of plaintiff's claims against the Highway Commission (now Department of Transportation) and actions against an employee since both are grounded on the actionable negligence of the employee and are cumulative and consistent. Wirth v. Bracey, 258 N.C. 505, 128 S.E.2d 810 (1963).

But recovery against the negligent employee must be by common-law action. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968); Mason v. North Carolina State Hwy. Comm'n, 7 N.C. App. 644, 173 S.E.2d 515 (1970).

Recovery, if any, against the alleged negligent employee must be by common-law action. Wirth v. Bracey, 258 N.C. 505, 128 S.E.2d 810 (1963).

Effect of Compromise and Settlement in Action against Employee. — Where a person injured by the alleged negligence of a State employee while engaged in the discharge of his duties as such brought suit against the employee before the passage of the Tort Claims Act, and a compromise was effected in the suit, whereby the employee, or his insurer, paid the plaintiff $9,715 and the plaintiff released the employee and his insurer for all claims arising out of the accident, a subsequent action by the plaintiff against the State under the Tort Claims Act was properly dismissed, because (1) plaintiff had recovered from the employee an amount in excess of the maximum he could be awarded against the State, which was then $8,000, and (2) plaintiff had released the employee, the active tort-feasor, from further liability. MacFarlane v. North Carolina Wildlife Resources Comm'n, 244 N.C. 385, 93 S.E.2d 557 (1956), wherein the plaintiff had been named in the Tort Claims Act as one whose claim should be heard and determined by the Industrial Commission, and the amount of his claim had been listed in the Act as $25,000.

An action to recover for the wrongful death of a prisoner assigned to work under the supervision of the State Highway and Public Works Commission could be maintained under the State Tort Claims Act, the sole remedy not being under the Workmen's Compensation Act prior to the 1957 amendment to § 97-13(c). Lawson v. North Carolina State Hwy. & Pub. Works Comm'n, 248 N.C. 276, 103 S.E.2d 366 (1958). See § 97-13 and note thereto.

The second 1957 amendment to § 97-13(c) does not bar a prisoner from maintaining an action under this section, for if the legislature intended to withdraw altogether a prisoner's right to pursue a tort claim, the logical procedure would be by amendment to the Tort Claims Act. Ivey v. North Carolina Prison Dep't, 252 N.C. 615, 114 S.E.2d 812 (1960).

Recovery May Be Had Only for Negligent Acts. — No recovery can be had for the intentional shooting of plaintiff's decedent by a State highway patrolman, since the Tort Claims Act does not permit recovery for wrongful and intentional injuries, but limits recovery to negligent acts. Jenkins v. North Carolina Dep't of Motor Vehicles, 244 N.C. 560, 94 S.E.2d 577 (1956).

And Not for Negligent Omissions. — The intent of the legislature was to permit recovery under the Tort Claims Act only for the negligent acts of State employees, for the things done by them, not for the things left undone. Thus, recovery cannot be had for injuries in a wreck resulting from the negligent failure or omission of the responsible employees of the Highway Commission (now Department of Transportation) to repair a hole in a State highway. Flynn v. North Carolina State Hwy. & Pub. Works Comm'n, 244 N.C. 617, 94 S.E.2d 571 (1956).

The Highway Commission (now Department of Transportation) is an agency of the State and is not liable for the negligent omissions of its employees even under the provisions of the Tort Claims Act. Midgett v. North Carolina State Hwy. Comm'n, 265 N.C. 373, 144 S.E.2d 121 (1965).

The Tort Claims Act permits recovery only for negligent acts of employees of the Highway Commission (now Department of Transportation), not for their negligent omissions or failures to act. Ayscue v. North Carolina State Hwy. Comm'n, 270 N.C. 100, 153 S.E.2d 823 (1967).

The Tort Claims Act permits recovery only for the negligent acts of State employees, but does not permit recovery for their negligent failure to act. Brooks v. University of N.C., 2 N.C. App. 157, 162 S.E.2d 616 (1968).

Under the State Tort Claims Act recovery is permitted for injuries resulting from a negligent act, but not those resulting from a negligent omission on the part of State employees. Mackey v. North Carolina State Hwy. Comm'n, 4 N.C. App. 630, 167 S.E.2d 524 (1969).

The requirement of the statute is not met by showing negligence, for negligence may consist of an act or an omission. Failure to act is not an act. Mackey v. North Carolina State Hwy. Comm'n, 4 N.C. App. 630, 167 S.E.2d 524 (1969).

The Tort Claims Act, is applicable only to negligent acts of State employees and is not applicable to negligent omissions. Etheridge v. Graham, 14 N.C. App. 551, 188 S.E.2d 551 (1972).

Hence, Failure to Remove Gravel from Road Cannot Be Basis for Award. — The failure of the State Highway Commission (now Department of Transportation) employees to remove gravel from a road cannot be the basis for an award under the Tort Claims Act. Ayscue v. North Carolina State Hwy. Comm'n, 270 N.C. 100, 153 S.E.2d 823 (1967).

But one who undertakes to do something and does it negligently commits a negligent act, not a negligent omission. Mackey v. North Carolina State Hwy. Comm'n, 4 N.C. App. 630, 167 S.E.2d 524 (1969).

Intentional acts are legally distinguishable from negligent acts. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

And injuries intentionally inflicted are not compensable under the Tort Claims Act. Davis v. North Carolina State Hwy. Comm'n, 271 N.C. 405, 156 S.E.2d 685 (1967).

Injuries intentionally inflicted by employees of agencies of the State are not compensable under the Tort Claims Act. Braswell v. North

Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Injuries intentionally inflicted by employees of a State agency are not compensable under the North Carolina Tort Claims Act. Givens v. Sellars, 273 N.C. 44, 159 S.E.2d 530 (1968).

Neither intentional misrepresentation nor conspiracy to defraud is negligence. Davis v. North Carolina State Hwy. Comm'n, 271 N.C. 405, 156 S.E.2d 685 (1967).

What Constitutes Willful Injury. — To constitute willful injury there must be actual knowledge, or that which the law deems to be the equivalent of actual knowledge, of the peril to be apprehended, coupled with a design, purpose, and intent to do wrong and inflict injury. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

There are two kinds of negligence, the one consisting of carelessness and inattention whereby another is injured in his person or property, and the other consisting of a willful and intentional failure or neglect to perform a duty assumed by contract or imposed by operation of law for the promotion of the safety of the person or property of another. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Ordinary negligence has as its basis that a person charged with negligent conduct should have known the probable consequences of his act. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Wanton and willful negligence rests on the assumption that one knew the probable consequences, but was recklessly, wantonly or intentionally indifferent to the results. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Willful or intentional negligence is something distinct from mere carelessness and inattention, however gross. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

The true conception of willful negligence involves a deliberate purpose not to discharge some duty necessary to the safety of the person or property of another, which duty the person owing it has assumed by contract or which is imposed on the person by operation of law. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

The term "wanton negligence" always implies something more than a negligent act. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

A wanton act is one which is performed intentionally with a reckless indifference to injurious consequences probable to result therefrom. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

An act is wanton when it is done of wicked purpose, or when done needlessly, manifesting a reckless indifference to the rights of others. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

An act is wanton when, being needless, it manifests no rightful purpose, but a reckless indifference to the interests of others; and it may be culpable without being criminal. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

The word "wanton" implies turpitude, and the act is committed or omitted of willful, wicked purpose. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

The term "willfully" implies that the act is done knowingly and of stubborn purpose, but not of malice. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Gross Negligence. — An analysis of North Carolina decisions impels the conclusion that the Supreme Court, in reference to gross negligence, has used the term in the sense of wanton conduct. Negligence, a failure to use due care, be it slight or extreme, connotes inadvertence. Wantonness, on the other hand, connotes intentional wrongdoing. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Degree of Negligence Sufficient to Constitute Intentional Tort. — A thorough and exhaustive discussion of the degree of negligence sufficient to constitute an intentional tort depriving the defendant of the defense of contributory negligence appears in Wagoner v. North Carolina R.R., 238 N.C. 162, 77 S.E.2d 701 (1953). Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Negligent Acts Need Not Be Sole Proximate Cause of Injury. — It was not the intent of the legislature to limit liability under the Tort Claims Act to situations where the negligence of an employee was the sole proximate cause of the injury or damages inflicted. Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960).

Since State Agency Regarded as Private Person. — The legal limitation on the right to allow a claim under the provisions of this section is limited to the same category with respect to tort claims against the agency covered as if such agency were a private person and such private person would be liable under the laws of North Carolina. Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960).

Claimant Must be Free of Contributory Negligence. — The Tort Claims Act does not authorize recovery unless the claimant is free from contributory negligence. Huff v. Northampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963).

Negligence, etc., Determined under Same Rules as Applicable to Private Litigation. — Negligence, contributory negligence and proximate cause, as well as the applicability of the doctrine of respondeat superior, are to be determined under the same rules as those applicable to litigation between private individuals. Barney v. North Carolina State Hwy. Comm'n, 282 N.C. 278, 192 S.E.2d 273 (1972).

The State may prescribe such terms and conditions as it sees fit, subject to constitutional limitations, in waiving its governmental immunity to suit for negligence, and the State Tort Claims Act permits recovery against the State only for such injuries as are proximately caused by negligence of a State employee while acting within the scope of his employment when there is no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted. Alliance Co. v. State Hosp., 241 N.C. 329, 85 S.E.2d 386 (1955).

And May Require Claimant to Follow Certain Procedural Rules. — In a suit against the State for an alleged tort, the plaintiff cannot complain when the State requires him to follow certain procedural rules before its consent is given to waive its sovereign immunity. Bailey v. North Carolina Dep't of Mental Health, 2 N.C. App. 645, 163 S.E.2d 652 (1968).

Which Differ from Court Procedures. — The legislature has made the procedure in hearings before the Industrial Commission different from the procedures in the superior court. Bailey v. North Carolina Dep't of Mental Health, 2 N.C. App. 645, 163 S.E.2d 652 (1968).

The manner in which the Industrial Commission transacts its business need not necessarily conform to court procedure. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968), aff'd, N.C. 168 S.E.2d 33 (1969).

Waiver. — In a Tort Claims Act proceeding, where defendant county board of education made no objection to a member of the Industrial Commission conducting the second hearing, the first hearing and award being conducted by another member of the Commission, the defendant was held to have waived any objection thereto, especially when defendant joined in the request for a second hearing and had sufficient notice beforehand as to the identity of the Commissioner. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968), aff'd, N.C. 168 S.E.2d 33 (1969).

A party to a compensation case is not entitled to try his case "piecemeal." Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

Affidavit Must Name Employee and Set Forth Act of Negligence. — It is necessary to recovery that the affidavit filed in support of the claim and the evidence offered before the Commission identify the employee alleged to have been negligent and set forth the specific act or acts of negligence relied upon. Ayscue v. North Carolina State Hwy. Comm'n, 270 N.C. 100, 153 S.E.2d 823 (1967); Brooks v. University of N.C., 2 N.C. App. 157, 162 S.E.2d 616 (1968).

It is necessary to a recovery under this section that the affidavit of claimant set forth the name of the allegedly negligent employee and the acts of negligence relied upon. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Where the affidavit filed with the Commission alleged only that a named person was the road maintenance supervisor for the defendant Highway Commission (now Department of Transportation) in the county where the injury occurred on an allegedly defective highway but it did not allege any act done by him and there was no evidence of any negligent act on his part, the record would not support an order for recovery under the Tort Claims Act. Ayscue v. North Carolina State Hwy. Comm'n, 270 N.C. 100, 153 S.E.2d 823 (1967).

Purpose of Naming Negligent Employee. — The purpose of requiring the negligent employee to be named is to enable the department of the State against which the claim is made to investigate, not all of its employees, but the particular ones actually involved. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Amendment of Affidavit to Allege Name of Employee. — In a proceeding under the Tort Claims Act, the Industrial Commission properly allowed amendment of claimant's affidavit to allege the name of the negligent State employee, since the amendment served the purpose of showing the existence of jurisdiction rather than conferring it. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968), aff'd, N.C. 168 S.E.2d 33 (1969).

Determination of jurisdiction is the first order of business in every proceeding before the Industrial Commission. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968), aff'd, N.C. 168 S.E.2d 33 (1969).

Findings Necessary to Authorize Payment. — In order to authorize the payment of compensation, the Industrial Commission's findings must include (1) a negligent act, (2) on the part of a State employee, and (3) while acting in the scope of his employment. Mackey v. North Carolina State Hwy. Comm'n, 4 N.C. App. 630, 167 S.E.2d 524 (1969).

Findings of Commission. — The Commission is not required to make a finding as to each detail of the evidence or as to every inference or shade of meaning to be drawn therefrom. Bundy v. Cabarrus County Bd. of Educ., 5 N.C. App. 397, 168 S.E.2d 682 (1969).

The Industrial Commission is not required to make findings coextensive with the credible evidence. Bundy v. Cabarrus County Bd. of Educ., 5 N.C. App. 397, 168 S.E.2d 682 (1969).

The determination of facts must be found from judicial admissions made by the parties, facts agreed, stipulations entered into and noted at the hearing, and evidence offered in open court, after all parties have been given full opportunity to be heard. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968), aff'd, N.C. 168 S.E.2d 33 (1969).

Finding of Fact Supported by Evidence Is Binding on Appeal. — Where Industrial Commission found as a fact that minor claimant was not guilty of contributory negligence in a school bus accident, the question was not presented whether the Commission erred in its conclusion of law that the claimant was conclusively presumed incapable of contributory negligence, since the Commission's finding of fact supported by competent evidence is binding on appeal. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968), aff'd, N.C. 168 S.E.2d 33 (1969).

A finding of fact on appeal by the Industrial Commission, other than a jurisdictional finding, is conclusive if there is any competent evidence in the record to support it. Barney v. North Carolina State Hwy. Comm'n, 282 N.C. 278, 192 S.E.2d 273 (1972).

But the Industrial Commission's designation of a declaration by it as a finding of fact is not conclusive. Barney v. North Carolina State Hwy. Comm'n, 282 N.C. 278, 192 S.E.2d 273 (1972).

The determination of negligence, proximate cause, and contributory negligence are mixed questions of law and fact in a proceeding under the Tort Claims Act and are reviewable on appeal from the Industrial Commission, and the designation "Finding of Fact" or "Conclusion of Law" by the Commission is not conclusive. Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Negligence and contributory negligence are mixed questions of law and fact and, upon appeal, the reviewing court must determine whether facts found by the Industrial Commission support its conclusion of contributory negligence. Barney v. North Carolina State Hwy. Comm'n, 282 N.C. 278, 192 S.E.2d 273 (1972).

Industrial Commission and Superior Court Are Bound by Law of Negligence. — The legislature intended that the Industrial Commission on the original hearing and the superior court on the hearing on appeal should each be bound by the law of negligence, both substantive and adjective, as such common-law rules and doctrines appear in the numerous decisions of the Supreme Court, subject only to the limitations stipulated in the Act. MacFarlane v. North Carolina Wildlife Resources Comm'n, 244 N.C. 385, 93 S.E.2d 557 (1956).

Plaintiff was held contributorily negligent as a matter of law in Braswell v. North Carolina A & T State Univ., 5 N.C. App. 1, 168 S.E.2d 24 (1969).

Damages Are Left to Commission's Discretion. — The amount of damages to be awarded is a matter which this section leaves to the discretion of the Commission. Brown v. Charlotte-Mecklenburg Bd. of Educ., 269 N.C. 667, 153 S.E.2d 335 (1967).

Rehearing. — The Industrial Commission, in a proper case, may grant a rehearing and hear additional evidence. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

A motion for a further hearing on the ground of introducing additional or newly discovered evidence rests in the sound discretion of the Industrial Commission and its ruling thereon is not reviewable in the superior court (now Court of Appeals) in the absence of an abuse of discretion by the Commission. Mason v. North Carolina State Hwy. Comm'n, 273 N.C. 36, 159 S.E.2d 574 (1968).

The right of subrogation exists under the provisions of this Article against State departments and agencies. Lyon & Sons, Inc. v. North Carolina State Bd. of Educ., 238 N.C. 24, 76 S.E.2d 553 (1953).

Collision Occurring in Virginia. — In an action brought in this State under the Tort Claims Act for a collision which occurred in Virginia, the substantive law of Virginia and the procedural law of North Carolina apply. Parsons v. Alleghany County Bd. of Educ., 4 N.C. App. 36, 165 S.E.2d 776 (1969).

Applied in Greene v. Mitchell County Bd. of Educ., 237 N.C. 336, 75 S.E.2d 129 (1953); Gould v. North Carolina State Hwy. & Pub. Works Comm'n, 245 N.C. 350, 95 S.E.2d 910 (1957); Gordon v. North Carolina State Hwy. & Pub. Works Comm'n, 250 N.C. 645, 109 S.E.2d 376 (1959); Gay v. Wake County Bd. of Educ., 254 N.C. 622, 119 S.E.2d 460 (1961); Burlington Indus., Inc. v. State Hwy. Comm'n, 262 N.C. 620, 138 S.E.2d 281 (1964); Bateman v. Elizabeth City State College, 5 N.C. App. 168, 167 S.E.2d 838 (1969); Cogburn v. North Carolina State Hwy. Comm'n, 14 N.C. App. 544, 188 S.E.2d 553 (1972); Stroud v. North Carolina Mem. Hosp., 15 N.C. App. 592, 190 S.E.2d 392 (1972); Bullman v. North Carolina State Hwy. Comm'n, 18 N.C. App. 94, 195 S.E.2d 803 (1973).

Stated in Bradshaw v. State Bd. of Educ., 244 N.C. 393, 93 S.E.2d 434 (1956); Wilmington Shipyard, Inc. v. North Carolina State Hwy. Comm'n, 6 N.C. App. 649, 171 S.E.2d 222 (1969); Steelman v. City of New Bern, 279 N.C. 589, 184 S.E.2d 239 (1971).

Cited in Eller v. Board of Educ., 242 N.C. 584, 89 S.E.2d 144 (1955); Lowe v. Department of Motor Vehicles, 244 N.C. 353, 93 S.E.2d 448 (1956); General Ins. Co. of America v. Faulkner, 259 N.C. 317, 130 S.E.2d 645 (1963); United States v. Muniz, 374 U.S. 150, 83 S. Ct. 1850, 10 L. Ed. 2d 805 (1963); Horney v. Meredith Swimming Pool Co., 267 N.C. 521, 148 S.E.2d 554 (1966); Sides v. Cabarrus Mem. Hosp., 287 N.C. 14, 213 S.E.2d 297 (1975); Mazzucco v. North Carolina Bd. of Medical Exmrs., 31 N.C. App. 47, 228 S.E.2d 529 (1976); Lanier v. North Carolina State Hwy. Comm'n, 31 N.C. App. 304, 229 S.E.2d 321 (1976).

§ 143-291.1. Costs. — The Industrial Commission is authorized by such order to tax the costs against the loser in the same manner as costs are taxed by the superior court in civil actions. When a State department, institution, or agency appeals the decision rendered by the hearing commissioner to the full Commission, the State department, institution or agency shall furnish a copy of the transcript of the hearing to the appellee without cost therefor. The State department, institution or agency concerned is authorized and directed to pay such costs as may be taxed against it, including all costs heretofore taxed against such department, agency or institution. (1955, c. 1102, s. 2; 1971, c. 58.)

§ 143-292. Notice of determination of claim; appeal to full Commission. —Upon determination of said claim the Commission shall notify all parties concerned in writing of its decision and either party shall have seven days after receipt of such notice within which to file notice of appeal with the Industrial Commission. Such appeal, when so taken, shall be heard by the Industrial Commission, sitting as a full Commission, on the basis of the record in the matter and upon oral argument of the parties, and said full Commission may amend, set aside, or strike out the decision of the hearing commissioner and may issue its own findings of fact and conclusions of law. Upon determination of said claim by the Industrial Commission, sitting as a full Commission, the Commission shall notify all parties concerned in writing of its decision. Such determination by the Industrial Commission, sitting as a full Commission, upon claims in an amount of five hundred dollars ($500.00) or less, shall be final as to the State or any of its departments, institutions or agencies, and no appeal shall lie therefrom by the State or any of its departments, institutions or agencies. (1951, c. 1059, s. 2; 1955, c. 770.)

Stated in Bradshaw v. State Bd. of Educ., 244 N.C. 393, 93 S.E.2d 434 (1956).

§ 143-293. Appeals to Court of Appeals. — Either the claimant or the State may, within 30 days after receipt of the decision and order of the full Commission, to be sent by registered or certified mail, but not thereafter, appeal from the decision of the Commission to the Court of Appeals. Such appeal shall be for errors of law only under the same terms and conditions as govern appeals in ordinary civil actions, and the findings of fact of the Commission shall be conclusive if there is any competent evidence to support them. The appellant shall cause to be prepared a statement of the case as required by the rules of the Court of Appeals. A copy of this statement shall be served on the respondent within 45 days from the entry of the appeal taken; within 20 days after such service, the respondent shall return the copy with his approval or specified amendments endorsed or attached; if the case be approved by the respondent, it shall be filed with the clerk of the Court of Appeals as a part of the record; if not returned with objections within the time prescribed, it shall be deemed approved. The chairman of the Industrial Commission shall have the power, in the exercise of his discretion, to enlarge the time in which to serve statement of case on appeal and exceptions thereto or counterstatement of case.

If the case on appeal is returned by the respondent with objections as prescribed, or if a countercase is served on appellant, the appellant shall immediately request the chairman of the Industrial Commission to fix a time and place for settling the case before him. If the appellant delays longer than 15 days after the respondent serves his countercase or exceptions to request the chairman to settle the case on appeal, and delays for such period to mail the case and countercase or exceptions to the chairman, then the exceptions filed by the respondent shall be allowed; or the countercase served by him shall constitute the case on appeal; but the time may be extended by agreement of counsel.

The chairman shall forthwith notify the attorneys of the parties to appear before him for that purpose at a certain time and place, which time shall not be more than 20 days from the receipt of the request. At the time and place stated, the chairman of the Industrial Commission shall settle and sign the case and deliver a copy to the attorneys of each party. The appellant shall within five days thereafter file it with the clerk of the Court of Appeals, and if he fails to do so the respondent may file his copy. (1951, c. 1059, s. 3; 1967, c. 655, s. 1.)

Commission Bound by Order of Superior Court (Now Court of Appeals). — Where, in a proceeding under the Tort Claims Act, the superior court (now Court of Appeals) on appeal adjudicates that certain findings of the Commission were not supported by evidence, and remands the cause, the Commission is bound by the order unless and until it is set aside on further appeal to the Supreme Court, and the Commission may not merely rephrase the original findings and adopt them as so rephrased. Johnson v. Cleveland County Bd. of Educ., 241 N.C. 56, 84 S.E.2d 256 (1954).

Exceptions Should Be Filed before Hearing in Superior Court (Now Court of Appeals). — If the appellants desire to enter exceptions to the findings of fact made by the Industrial Commission, they should file prior to the hearing in the superior court (now Court of Appeals). Whether the judge should interrupt the hearing and call in the court reporter so that specific exceptions can be taken to certain findings of fact and conclusions of law of the Commission rests in his sound discretion. Greene v. Mitchell County Bd. of Educ., 237 N.C. 336, 75 S.E.2d 129 (1953).

Necessity for Exceptions and Taking of Appeal. — Where the record failed to show any exception to the findings, conclusions and order of the Industrial Commission dismissing plaintiff's claim or an appeal taken as permitted by this section, the superior court (now Court of Appeals) was without jurisdiction to hear plaintiff's claim. McBride v. North Carolina State Bd. of Educ., 257 N.C. 152, 125 S.E.2d 393 (1962).

Inquiry of Reviewing Court Limited to Two Questions of Law. — In passing upon an appeal from an award of the Industrial Commission, the reviewing court is limited in its inquiry to two questions of law, namely: (1) Whether or not there was any competent evidence before the Commission to support its findings of fact; and (2) whether or not the findings of fact of the Commission justify its legal conclusions and decision. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968); Mason v. North Carolina State Hwy. Comm'n, 273 N.C. 36, 159 S.E.2d 574 (1968); Stroud v. North Carolina Mem. Hosp., 15 N.C. App. 592, 190 S.E.2d 392 (1972).

In reviewing a decision of the Industrial Commission in a case arising under the Tort Claims Act, an appellate court has two questions to consider: whether the Commission's findings of fact are supported by competent evidence, and whether its conclusions of law are supported by its findings of fact. Tanner v. State Dep't of Cor., 19 N.C. App. 689, 200 S.E.2d 350 (1973).

Specific findings of fact by the Industrial Commission are required. These must cover the crucial questions of fact upon which plaintiff's right to compensation depends. Otherwise, the reviewing court cannot determine whether an adequate basis exists, either in fact or in law, for the ultimate finding. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

A motion for a further hearing on the ground of introducing additional or newly discovered evidence rests in the sound discretion of the Industrial Commission, and its ruling thereon is not reviewable in the superior court (now Court of Appeals) in the absence of an abuse of discretion by the Commission. Mason v. North Carolina State Hwy. Comm'n, 273 N.C. 36, 159 S.E.2d 574 (1968).

Finding of Commission Conclusive if Supported by Competent Evidence. — Where the Industrial Commission has found as a fact and concluded as a matter of law that there was no negligence on the part of the employee, bus driver, of the State, resulting in damages to the claimant within the purview of §§ 143-291 to 143-300, and the superior court (now Court of Appeals) is unable to find that there is no evidence to support the finding of the Commission, the judgment of the superior court (now Court of Appeals) affirming the decision and order of the Commission is proper. Bradshaw v. State Bd. of Educ., 244 N.C. 393, 93 S.E.2d 434 (1956).

If there is any competent evidence to support findings of fact by the Industrial Commission, such findings are conclusive, and on appeal are not subject to review by the superior court (now Court of Appeals) or the Supreme Court even though there is evidence that would support a finding to the contrary. English Mica Co. v. Avery County Bd. of Educ., 246 N.C. 714, 100 S.E.2d 72 (1957); Gordon v. North Carolina State Hwy. & Pub. Works Comm'n, 250 N.C. 645, 109 S.E.2d 376 (1959); Jordan v. State Hwy. Comm'n, 256 N.C. 456, 124 S.E.2d 140 (1962); Tanner v. State Dep't of Cor., 19 N.C. App. 689, 200 S.E.2d 350 (1973).

The findings of fact by the Industrial Commission are conclusive if there is any competent evidence to support them. Mitchell v. Guilford County Bd. of Educ., 1 N.C. App. 373, 161 S.E.2d 645 (1968); Mackey v. North Carolina State Hwy. Comm'n, 4 N.C. App. 630, 167 S.E.2d 524 (1969).

The Industrial Commission's findings of fact are conclusive on appeal when supported by competent evidence, except for jurisdictional findings. This is true, even though there is evidence which would support findings to the contrary. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968); Bailey v. North Carolina Dep't of Mental Health, 2 N.C. App. 645, 163 S.E.2d 652 (1968).

Findings of Commission Are Subject to Review. — Findings by the Commission which are mixtures of findings of fact and conclusions of law are subject to review by the superior court (now Court of Appeals), and by the Supreme Court, on appeal. Brown v. Charlotte-Mecklenburg Bd. of Educ., 269 N.C. 667, 153 S.E.2d 335 (1967).

Findings of fact of the Industrial Commission, if supported by any competent evidence, are conclusive on appeal even though there is evidence which would support a contrary finding. Bullman v. North Carolina State Hwy. Comm'n, 18 N.C. App. 94, 195 S.E.2d 803 (1973).

Additional Facts May Not Be Found on Appeal. — Upon an appeal from the Industrial Commission, the reviewing court may not find facts in addition to those found by the Commission, even though there is in the record evidence to support such a finding, the appeal being for errors of law only. Brown v. Charlotte-Mecklenburg Bd. of Educ., 269 N.C. 667, 153 S.E.2d 335 (1967).

Remand on Ground of Newly Discovered Evidence. — In the superior court (now Court of Appeals) upon appeal from an award by the Industrial Commission, the court has power in a proper case to order a rehearing, and to remand the proceeding to the Industrial Commission, on the ground of newly discovered evidence, but this is a matter within the sound discretion of the court. Mason v. North Carolina State Hwy. Comm'n, 273 N.C. 36, 159 S.E.2d 574 (1968).

Ordinarily, the limited authority of the reviewing court does not permit the trial judge to order remand of the cause for the taking of additional evidence. However, the judge of the superior court (now Court of Appeals) may remand a cause to the Industrial Commission on ground of newly discovered evidence in a proper case, and such proper case is made out only when it appears by affidavits: (1) that the witness will give the newly discovered evidence; (2) that it is probably true; (3) that it is competent, material, and relevant; (4) that due diligence has been used and the means employed, or that there has been no laches, in procuring the testimony at the trial; (5) that it is not merely cumulative; (6) that it does not tend only to contradict a former witness or to impeach or discredit him; and (7) that it is of such a nature as to show that on another trial a different result will probably be reached and that the right will prevail. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

Remand for Misapprehension of Law. — Where facts are found or where the Commission fails to find facts under a misapprehension of law, the court will, where the ends of justice require, remand the cause so that the evidence may be considered in its true legal light. Bailey v. North Carolina Dep't of Mental Health, 2 N.C. App. 645, 163 S.E.2d 652 (1968); Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

Remand Where Findings Insufficient. — When the findings are insufficient to enable the reviewing court to determine the rights of the parties, the case must be remanded to the Commission for proper findings. Bailey v. North Carolina Dep't of Mental Health, 272 N.C. 680, 159 S.E.2d 28 (1968).

Applied in Lyon & Sons, Inc. v. North Carolina State Bd. of Educ., 238 N.C. 24, 76 S.E.2d 553 (1953); Gay v. Wake County Bd. of Educ., 254 N.C. 622, 119 S.E.2d 460 (1961); Lanier v. North Carolina State Hwy. Comm'n, 31 N.C. App. 304, 229 S.E.2d 321 (1976); Withers v. Charlotte-Mecklenburg Bd. of Educ., 32 N.C. App. 230, 231 S.E.2d 276 (1977).

Quoted in Tucker v. North Carolina State Hwy. & Pub. Works Comm'n, 247 N.C. 171, 100 S.E.2d 514 (1957); Adams v. State Bd. of Educ., 248 N.C. 506, 103 S.E.2d 854 (1958); Bateman v. Elizabeth City State College, 5 N.C. App. 168, 167 S.E.2d 838 (1969).

Stated in Parsons v. Alleghany County Bd. of Educ., 4 N.C. App. 36, 165 S.E.2d 776 (1969).

§ 143-294. Appeal to Court of Appeals to act as supersedeas. — The appeal from the decision of the Industrial Commission to the Court of Appeals shall act as a supersedeas, and the State department, institution or agency shall not be required to make payment of any judgment until the questions at issue therein shall have been finally determined as provided in this Article. (1951, c. 1059, s. 4; 1967, c. 655, s. 2.)

§ 143-295. Settlement of claims. — (a) Any claims except claims of minors pending or hereafter filed against the various departments, institutions and agencies of the State may be settled upon agreement between the claimant and the Attorney General for an amount not in excess of one thousand dollars ($1,000), without the approval of the Industrial Commission. The Attorney General may also make settlements by agreement for claims in excess of one thousand dollars ($1,000) and claims of infants or persons non sui juris, provided such claims have been subject to review and approval by the Industrial Commission.

(b) In settlements under one thousand dollars ($1,000), agreed upon between the Attorney General and the claimant, the filing of an affidavit as set forth in G.S. 143-297 shall not be required.

(c) Transfer of title of a motor vehicle acquired in behalf of the State in settlement of claim pursuant to the provisions of this Article may be transferred by the Attorney General in the same manner as provided for such transfer by an insurance company under the provisions of G.S. 20-75. (1951, c. 1059, s. 5; 1971, c. 1103, s. 1; 1973, c. 699; 1975, c. 756.)

Editor's Note. — The 1975 amendment rewrote subsection (a), added present subsection (b), redesignated former subsection (b) as present subsection (c) and substituted "as provided for such transfer" for "as title is transferred" near the end of that subsection.

§ 143-296. Powers of Industrial Commission; deputies. — The members of the Industrial Commission, or a deputy thereof, shall have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, and awards based thereon, and punish for contempt. The Industrial Commission is authorized to appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and such deputy or deputies are hereby vested with the same power and authority to hear and determine tort claims against State departments, institutions, and agencies as is by this Article vested in the members of the Industrial Commission. Such deputy or deputies shall also have and are hereby vested with the same power and authority to hear and determine cases arising under the Workmen's Compensation Act when assigned to do so by the Industrial Commission. (1951, c. 1059, s. 6.)

§ 143-297. Affidavit of claimant; docketing; venue; notice of hearing; answer, demurrer or other pleading to affidavit. — In all claims listed in § 13 of Chapter 1059 of the Session Laws of 1951, and all claims which may hereafter be filed against the various departments, institutions, and agencies of the State, the claimant or the person in whose behalf the claim is made shall file with the Industrial Commission an affidavit in duplicate, setting forth the following information:

(1) The name of the claimant;
(2) The name of the department, institution or agency of the State against which the claim as asserted, and the name of the State employee upon whose alleged negligence the claim is based;
(3) The amount of damages sought to be recovered;
(4) The time and place where the injury occurred;
(5) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim.

Upon receipt of such affidavit in duplicate, the Industrial Commission shall enter the case upon its hearing docket and shall hear and determine the matter in the county where the injury occurred unless the parties agree or the Industrial Commission directs that the case may be heard in some other county. All parties shall be given reasonable notice of the date when and the place where the claim will be heard.

Immediately upon docketing the case, the Industrial Commission shall forward one copy of plaintiff's affidavit to the office of the Attorney General of North Carolina if the claim is asserted against any department, institution, or agency of the State.

The department, institution or agency of the State against whom the claim is asserted shall file answer, demurrer or other pleading to the affidavit within 30 days after receipt of copy of same setting forth any defense it proposes to make in the hearing or trial, and no defense may be asserted in the hearing or trial unless it is alleged in such answer, except such defenses as are not required by the Code of Civil Procedure or other laws to be alleged. (1951, c. 1059, s. 9; 1963, c. 1063; 1971, c. 893, s. 2; c. 1103, s. 2.)

Negligent planning or negligent execution of plans may give rise to a tort claim. Wrape v. North Carolina State Hwy. Comm'n, 263 N.C. 499, 139 S.E.2d 570 (1965).

But Not Omission. — An omission or failure to act will not support a tort claim. Wrape v. North Carolina State Hwy. Comm'n, 263 N.C. 499, 139 S.E.2d 570 (1965).

Thus, No Recovery Allowed under Article Where Highway Construction Plans Not Alleged to Be Faulty. — The owner of a pond may not recover under the State Tort Claims Act for damage to the pond resulting from silt washed down from a fill necessarily incident to the improvement of a highway, the improvement having been made in accordance with the plans and specifications, and there being no contention that the plans and specifications were faulty or negligently formulated. Wrape v. North Carolina State Hwy. Comm'n, 263 N.C. 499, 139 S.E.2d 570 (1965).

However, Property Taken Must Be Compensated for in Absence of Negligence. —In the absence of negligent acts, the owner of property is entitled to compensation if the construction of highways amounts to a taking of his property. Wrape v. North Carolina State Hwy. Comm'n, 263 N.C. 499, 139 S.E.2d 570 (1965).

How Jurisdiction Invoked. — It is only necessary in order to invoke the jurisdiction of the Industrial Commission for the claimant, or person in whose behalf the claim is made, to file with the Industrial Commission an affidavit in duplicate setting forth the material facts, as required by this section. Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960).

This section does not require the use of legal, technical or formal language. Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960).

Nor Formal Pleadings. — See Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960).

But Claim Must State Sufficient Facts. — Adherence to formal rules of pleading is not required under this section but the claim should state facts sufficient to identify the agent or employee and a brief statement of the negligent act that caused the injury. Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959); Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960).

And Defective Claim May be Challenged by Demurrer. — If a claim, upon its face, shows that the State department or agency sought to be charged is not liable, the Commission may end the proceeding, and a proper way to take advantage of the defect is by demurrer. Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

Affidavit Must Name Employee and Set Forth Acts of Negligence. — It is necessary to recovery under the Tort Claims Act that the affidavit of the claimant set forth the name of the allegedly negligent employee and the acts of negligence relied upon. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968), aff'd, N.C. 168 S.E.2d 33 (1969).

A claim under the State Tort Claims Act must identify the employee of the State whose negligence is asserted, and set forth the act or acts on his part which are relied upon. Floyd v. North Carolina State Hwy. & Pub. Works Comm'n, 241 N.C. 461, 85 S.E.2d 703 (1955).

The purpose of this section in requiring the negligent employee to be named is to enable the department of the State against which the claim is made to investigate, not all of its employees, but the particular ones actually involved. Tucker v. North Carolina State Hwy. & Pub. Works Comm'n, 247 N.C. 171, 100 S.E.2d 514 (1957).

The reason for requiring the negligent employee to be named in the affidavit is so that the department of the State against which claim is made will not have to investigate all of its employees, but only those alleged to have been negligent. Mason v. North Carolina State Hwy. Comm'n, 7 N.C. App. 644, 173 S.E.2d 515 (1970).

Remedy If Claimant Names Wrong Employee. — If a claimant mistakenly names a wrong employee, his remedy is to address a motion to amend the affidavit to the sound discretion of the Industrial Commission. Mason v. North Carolina State Hwy. Comm'n, 7 N.C. App. 644, 173 S.E.2d 515 (1970).

Amendment to Affidavit after Time Allowed. — The affidavit filed by a claimant pursuant to this section is in the nature of a complaint in an ordinary tort action, and the allowance of an amendment thereto after the expiration of the time allowed by statute, rests in the sound discretion of the Industrial Commission, and its ruling thereon is not subject to review in the absence of an abuse of such discretion. Mason v. North Carolina State Hwy. Comm'n, 273 N.C. 36, 159 S.E.2d 574 (1968).

Stipulation Obviates Error in Naming Employee in Affidavit and Claim. — Where, prior to the hearing, the parties stipulate the name and position of the State employee charged with negligence, such stipulation meets the requirements of this section that the negligent employee be named and obviates error in naming the employee in the affidavit and claim, and the allowance of an amendment to this effect on appeal to the superior court is immaterial. Tucker v. North Carolina State Hwy. & Pub. Works Comm'n, 247 N.C. 171, 100 S.E.2d 514 (1957).

Showing Negligence and Freedom from Contributory Negligence. — In order for claimant to prevail in a proceeding under the State Tort Claims Act, he must show not only injury resulting from negligence of a designated State employee, but also that claimant was not guilty of contributory negligence. Floyd v. North Carolina State Hwy. & Pub. Works Comm'n, 241 N.C. 461, 85 S.E.2d 703 (1955).

Sufficiency of Evidence. — Evidence held to support sole conclusion that State employee was not guilty of negligence. Floyd v. North Carolina State Hwy. & Pub. Works Comm'n, 241 N.C. 461, 85 S.E.2d 703 (1955).

Applied in Parsons v. Alleghany County Bd. of Educ., 4 N.C. App. 36, 165 S.E.2d 776 (1969).

§ 143-298. Duty of Attorney General; expenses. — It shall be the duty of the Attorney General to represent all departments, institutions, and agencies of the State in connection with claims asserted against them and to attend all hearings in connection therewith where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance. In the event the amount appropriated to the Attorney General's office for travel and subsistence is insufficient to take care of the additional expense incident to attending these hearings, the Governor and Council of State are authorized to pay such additional travel expenses from the Contingency and Emergency Fund. (1951, c. 1059, s. 10; 1971, c. 1103, s. 3.)

§ 143-299. Limitation on claims. — All claims against any and all State departments, institutions, and agencies shall henceforth be forever barred unless a claim be filed with the Industrial Commission within three years after the accrual of such claim, or if death results from the accident, the claim for wrongful death shall be forever barred unless a claim be filed by the personal representative of the deceased with the Industrial Commission within two years after such death. (1951, c. 1059, s. 11; 1973, c. 659.)

Quoted in Lyon & Sons v. North Carolina State Bd. of Educ., 238 N.C. 24, 76 S.E.2d 553 (1953).

§ 143-299.1. Contributory negligence a matter of defense; burden of proof. — Contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted shall be deemed to be a matter of defense on the part of the State department, institution or agency against which the claim is asserted, and such State department, institution or agency shall have the burden of proving that the claimant or the person in whose behalf the claim is asserted was guilty of contributory negligence. (1955, c. 400, s. $1^{1}/_{4}$.)

Contributory Negligence Bars Recovery. — The State Tort Claims Act does not authorize recovery unless the claimant is free from contributory negligence. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Contributory Negligence of Minor. — Substantive case law concerning a minor's capability for negligence applies to this section, and thus a six-year-old child is incapable of contributory negligence as a matter of law. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Basis for Conclusion of Contributory Negligence. — A conclusion of negligence or contributory negligence may not be drawn in favor of the party having the burden of proof upon no basis other than speculation and unproved possibilities. Barney v. North Carolina State Hwy. Comm'n, 282 N.C. 278, 192 S.E.2d 273 (1972).

Negligence and contributory negligence are mixed questions of law and fact and, upon appeal, the reviewing court must determine whether facts found by the Industrial Commission support its conclusion of contributory negligence. Barney v. North Carolina State Hwy. Comm'n, 282 N.C. 278, 192 S.E.2d 273 (1972).

Applied in Oates v. North Carolina Dep't of Motor Vehicles, 24 N.C. App. 690, 212 S.E.2d 33 (1975).

Cited in Tucker v. North Carolina State Hwy. & Pub. Works Comm'n, 247 N.C. 171, 100 S.E.2d 514 (1957).

§ 143-300. Rules and regulations of Industrial Commission; destruction of records. — The Industrial Commission is hereby authorized and empowered to adopt such rules and regulations as may, in the discretion of the Commission, be necessary to carry out the purpose and intent of this Article. When any case or claim under this Article has been closed by proper order or award, all records concerning such case or claim may, after five years, in the discretion of the Industrial Commission with and by the authorization of the Department of Cultural Resources, be destroyed by burning or otherwise; provided, that no record pertaining to a case or claim of a minor shall be destroyed until the expiration of three years after such minor attains the age of 18 years. (1951, c. 1059, s. 12; 1957, c. 311; 1971, c. 1231, s. 1; 1973, c. 476, s. 48.)

§ 143-300.1. Claims against county and city boards of education for accidents involving school buses or school transportation service vehicles. — (a) The North Carolina Industrial Commission shall have jurisdiction to hear and determine tort claims against any county board of education or any city board of education, which claims arise as a result of any alleged mechanical defects or other defects which may affect the safe operation of a public school bus or school transportation service vehicle resulting from an alleged negligent act of maintenance personnel or as a result of any alleged negligent act or omission of the driver of a public school bus or school transportation service vehicle when the salary of such driver is paid or authorized to be paid from the State Public School Fund who is an employee of the county or city administrative unit of which such board is the governing board, and which driver was at the time of such alleged negligent act or omission operating a public school bus or school transportation service vehicle in the course of his employment by such administrative unit or such board. The liability of such county or city board of education, the defenses which may be asserted against such claim by such board, the amount of damages which may be awarded to the claimant, and the procedure for filing, hearing and determining such claim, the right of appeal from such determination, the effect of such appeal, and the procedure for taking, hearing and determining such appeal shall be the same in all respects as is provided in this Article with respect to tort claims against the State Board of Education except as hereinafter provided. Any claim filed against any county or city board of education pursuant to this section shall state the name and address of such board, the name of the employee upon whose alleged negligent act or omission the claim is based, and all other information required by G.S. 143-297 in the case of a claim against the State Board of Education. Immediately upon the docketing of a claim, the Industrial Commission shall forward one copy of the plaintiff's affidavit to the superintendent of the schools of the county or city administrative unit against the governing board of which such claim is made, one copy of the plaintiff's affidavit to the State Board of Education and one copy of the plaintiff's affidavit to the office of the Attorney General of North Carolina. All notices with respect to tort claims against any such county or city board of education shall be given to the superintendent of schools of the county or city administrative unit of which such board is a governing board, to the State Board of Education and also to the office of the Attorney General of North Carolina.

(b) The Attorney General shall be charged with the duty of representing the city or county board of education in connection with claims asserted against them pursuant to this section where the amount of the claim, in the opinion of the Attorney General, is of sufficient import to require and justify such appearance.

(c) In the event that the Industrial Commission shall make award of damages against any county or city board of education pursuant to this section, the Attorney General shall draw a voucher for the amount required to pay such award. Neither the county or city boards of education, or the county or city administrative unit shall be liable for the payment of any award made pursuant to the provisions of this section in excess of the amount paid upon such voucher by the Attorney General. Settlement and payment may be made by the Attorney General as provided in G.S. 143-295.

(d) The Attorney General may defend any civil action which may be brought against the driver of a public school bus or school transportation service vehicle or school bus maintenance mechanic when such driver or mechanic is paid or authorized to be paid from the State Public School Fund. The Attorney General may afford this defense through the use of a member of his staff or, in his discretion, employ private counsel. The Attorney General is authorized to pay any judgment rendered in such civil action not to exceed the limit provided under the Tort Claims Act. The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, up to the limit provided in the Tort Claims Act, provided that the authority granted in this subsection shall be limited to only those claims which would be within the jurisdiction of the Industrial Commission under the Tort Claims Act. (1955, c. 1283; 1961, c. 1102, ss. 1-3; 1967, c. 1032, s. 1; 1975, c. 589, s. 1; c. 916, ss. 1, 2; 1977, c. 935, s. 1.)

Editor's Note. — The first 1975 amendment inserted the language beginning "alleged mechanical defects" and ending "or as a result of any" near the beginning of the first sentence in subsection (a).

The second 1975 amendment inserted "or authorized to be paid" near the middle of the first sentence of subsection (a), substituted "State Public School Fund" for "State Nine Months School Fund" in that sentence and rewrote subsections (c) and (d).

The 1977 amendment, effective July 1, 1977, rewrote subsection (d).

This section is in derogation of sovereign immunity and, therefore, it must be strictly construed and its terms must be strictly adhered to. Withers v. Charlotte-Mecklenburg Bd. of Educ., 32 N.C. App. 230, 231 S.E.2d 276 (1977).

Meaning of "Operating". — See Withers v. Charlotte-Mecklenburg Bd. of Educ., 32 N.C. App. 230, 231 S.E.2d 276 (1977).

Affidavit Must Name Employee and Set Forth Acts of Negligence. — It is necessary to a recovery under this section that the affidavit of claimant set forth the name of the allegedly negligent employee and the acts of negligence relied upon. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Purpose of Naming Employee. — The purpose of this statute requiring the negligent employee to be named is to enable the department of the State against which the claim is made to investigate, not all of its employees, but the particular ones actually involved. Crawford v. Wayne County Bd. of Educ., 275 N.C. 354, 168 S.E.2d 33 (1969).

Amendment of Affidavit to Allege Name of Employee. — In a proceeding under the Tort Claims Act, the Industrial Commission properly allowed amendment of claimant's affidavit to allege the name of the negligent State employee, since the amendment served the purpose of showing the existence of jurisdiction rather than conferring it. Crawford v. Wayne County Bd. of Educ., 3 N.C. App. 343, 164 S.E.2d 748 (1968), aff'd, — N.C. —, 168 S.E.2d 33 (1969).

If an award is made, it must be based on the negligent act or omission of the driver of a public school bus who was employed at the time by the county or city administrative unit of which such board was the governing body. Huff v. Northampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963).

And Not on Act or Omission of Principal or Board of Education. — An award against a county board of education under the provisions of the Tort Claims Act may not be predicated on the negligent act or omission of a school principal or the county board of education. Huff v. Northampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963).

State Board of Education Relieved of Responsibility as to School Buses. — The General Assembly relieved the State Board of Education from all responsibility in connection with the operation and control of school buses in this State by the enactment of § 115-180 et seq., which authorizes county and city boards of education to operate buses for the transportation of pupils enrolled in the public schools of such county or city administrative units. Huff v. Northampton County Bd. of Educ., 259 N.C. 75, 130 S.E.2d 26 (1963); Brown v. Charlotte-Mecklenburg Bd. of Educ., 267 N.C. 740, 149 S.E.2d 10 (1966).

Installation of Unsafe Glass at End of Gymnasium. — A tort claim arising out of a local board of education's negligence in installing unsafe glass at the end of a gymnasium is not an injury of the kind for which an action may be brought against the board under the Tort Claims Act. Clary v. Alexander County Bd. of Educ., 285 N.C. 188, 203 S.E.2d 820 (1974), vacated on other grounds, 286 N.C. 525, 212 S.E.2d 160 (1975).

Applied in English Mica Co. v. Avery County Bd. of Educ., 246 N.C. 714, 100 S.E.2d 72 (1957); Mitchell v. Guilford County Bd. of Educ., 1 N.C. App. 373, 161 S.E.2d 645 (1968).

Quoted in Branch Banking & Trust Co. v. Wilson County Bd. of Educ., 251 N.C. 603, 111 S.E.2d 844 (1960).

Stated in Turner v. Gastonia City Bd. of Educ., 250 N.C. 456, 109 S.E.2d 211 (1959).

Cited in McBride v. North Carolina State Bd. of Educ., 257 N.C. 152, 125 S.E.2d 393 (1962).

ARTICLE 31A.

Defense of State Employees.

§ 143-300.2. Definitions. — Unless the context otherwise requires, the definitions contained in this section govern the construction of this Article.

(1) "Civil or criminal action or proceeding" includes any case, prosecution, special proceedings, or administrative proceeding in or before any court or agency of this State or any other state or the United States.

(2) "Employee" includes an officer, agent, or employee but does not include an independent contractor.

(3) "Employment" includes office, agency, or employment.

(4) "The State" includes all departments, agencies, boards, commissions, institutions, bureaus, and authorities of the State. (1967, c. 1092, s. 1.)

Cited in Brotherton v. Paramore, 5 N.C. App. 657, 169 S.E.2d 36 (1969).

§ 143-300.3. Defense of State employees. — Except as otherwise provided in G.S. 143-300.4, upon request of an employee or former employee, the State may provide for the defense of any civil or criminal action or proceeding brought against him in his official or individual capacity, or both, on account of an act done or omission made in the scope and course of his employment as a State employee. (1967, c. 1092, s. 1.)

§ 143-300.4. Grounds for refusal of defense. — (a) The State shall refuse to provide for the defense of a civil or criminal action or proceeding brought against an employee or former employee if the State determines that:

(1) The act or omission was not within the scope and course of his employment as a State employee; or

(2) The employee or former employee acted or failed to act because of actual fraud, corruption, or actual malice on his part; or

(3) Defense of the action or proceeding by the State would create a conflict of interest between the State and the employee or former employee; or

(4) Defense of the action or proceeding would not be in the best interests of the State.

(b) The determinations required by subsection (a) of this section shall be made by the Attorney General. The Attorney General may delegate his authority to make these determinations to the chief administrative authority of any agency, institution, board, or commission whose employees are to be defended as provided by subdivision (3) or (4) of G.S. 143-300.5. Approval of the request by an employee or former employee for provision of defense shall raise a presumption that the determination required by this section had been made and that no grounds for refusal to defend were discovered. (1967, c. 1092, s. 1.)

§ 143-300.5. Regulations for providing defense counsel. — The Governor may issue regulations for the defense of employees or former employees of the State pursuant to this Article through one or more of the following methods as may be appropriate to the employee or class of employees in question:

(1) By the Attorney General;

(2) By employing other counsel for this purpose as provided in G.S. 147-17;

(3) By authorizing the purchase of insurance which requires that the insurer provide or underwrite the cost of the defense; or

(4) By authorizing defense by counsel assigned to or employed by the department, agency, board, commission, institution, bureau, or authority which employed the person requesting the defense. (1967, c. 1092, s. 1.)

§ 143-300.6. Payments of judgments; compromise and settlement of claims. — (a) All final judgments awarded in courts of competent jurisdiction against State employees in actions or suits to which this Article applies, or any amounts payable under a settlement of such suits in accordance with this section, shall be paid by the department, agency, board, commission, institution, bureau or authority which employs or employed the State employee. Nothing in this section shall be deemed to waive the sovereign immunity of the State with respect to a claim covered under this section or to authorize the payment of any judgment or settlement against a State employee in excess of the limit provided in the Tort Claims Act.

(b) The Attorney General may compromise and settle any claim covered by this section to the extent that he finds the same to be valid, provided that no settlement of any such claim in an amount in excess of the limit provided in the Tort Claims Act shall be made without the approval of the employee. In a case wherein the Attorney General has stated in writing that private counsel ought to be provided because of a conflict with the interests of the State, the settlement in excess of the limit provided in the Tort Claims Act must be approved by the private counsel.

(c) The coverage afforded employees and former employees under this Article shall be excess coverage over any commercial liability insurance up to the limit of the Tort Claims Act. (1973, c. 1372; 1975, c. 209, ss. 1, 2.)

Editor's Note. — The 1975 amendment substituted "the limit provided in the Tort Claims Act" for "twenty thousand dollars ($20,000)" at the end of subsection (a) and in two places in subsection (b) and added subsection (c).

ARTICLE 32.

Payroll Savings Plan for State Employees.

§ 143-301. Authority of Governor. — The Governor may, with the approval of the Council of State, authorize any or all of the departments, institutions, and agencies of the State to establish a voluntary payroll deduction plan for the purchase of United States savings bonds by State employees, and to set up the necessary machinery for carrying out the purposes of this Article. (1951, c. 1020, s. 1.)

§ 143-302. Expenses. — Funds may be allotted out of the contingency and emergency appropriation to defray the necessary expenses incurred by departments, institutions and agencies financed out of the general fund of the State, and departments, institutions and agencies financed out of special funds or entirely from receipts shall defray the necessary expenses incurred without expense to the general fund of the State. (1951, c. 1020, s. 2.)

§ 143-303. Agreements of employees with heads of departments, etc. — Any of the employees of the State of North Carolina may voluntarily enter into written agreement with heads of the department or institution or agency where employed, which has adopted the payroll savings plan, to authorize deductions from his or her salary of certain designated sums to be invested in United States savings bonds of the kind and type specified in such agreement. (1951, c. 1020, s. 3.)

§ 143-304. Salary deductions and purchase of bonds authorized. — Upon the execution of such agreement by any State employee with the State department, institution or agency where employed, the department, institution or agency is authorized and empowered to deduct the sum specified in said agreement from the weekly or monthly salary of such employee, and to show deduction on all pay rolls similar to withholding tax, retirement, insurance, hospitalization, etc. Such sums shall be held until sufficient moneys have accumulated to the credit of each individual sufficient to purchase a bond, and such sum shall be invested in United States savings bonds, for and on behalf of such employee, and the bonds shall be delivered to the employee as soon as practical. Provided that no coercion of any sort shall be exercised to require any person to participate. (1951, c. 1020, s. 4.)

§ 143-305. Cancellation of agreements. — Such agreement may be cancelled by the employee executing the same upon giving written notice to the head of the department, institution or agency where employed not later than the fifteenth day of the month in which he or she desires such agreement to be terminated, and the head of the department, institution or agency may cancel any agreement, herein provided for, upon giving 10 days' written notice to the affected employee. Upon the termination of the agreement the head of the department, institution or agency is hereby authorized to refund any amount of money held for the employee. (1951, c. 1020, s. 5.)

ARTICLE 33.

Judicial Review of Decisions of Certain Administrative Agencies.

§§ 143-306 to 143-316: Repealed by Session Laws 1973, c. 1331, s. 2, as amended by Session Laws 1975, c. 69, s. 4.

Cross References. — For present provisions as to judicial review of decisions of administrative agencies, see §§ 150A-43 through 150A-52.

ARTICLE 33A.

Rules of Evidence in Administrative Proceedings before State Agencies.

§§ 143-317, 143-318: Repealed by Session Laws 1973, c. 1331, s. 2, as amended by Session Laws 1975, c. 69, s. 4.

Cross Reference. — For present provisions as to evidence in administrative proceedings, see §§ 150A-28 through 150A-30.

ARTICLE 33B.

Meetings of Governmental Bodies.

§ 143-318.1. Public policy. — Whereas the commissions, committees, boards, councils and other governing and governmental bodies which administer the legislative and executive functions of this State and its political subdivisions exist solely to conduct the peoples' business, it is the public policy of this State that the hearings, deliberations and actions of said bodies be conducted openly. (1971, c. 638, s. 1.)

Editor's Note. — Session Laws 1971, c. 638, s. 2, provides: "All laws and clauses of laws in conflict with the provisions of this act, including (without limitation) all laws and clauses of laws without statewide application, are hereby repealed."

Voting for a person to fill a vacancy on a board is "actions" under this section. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Voting by secret ballot cannot be reconciled with "openly" under this section. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Exceptions to the open meetings law should be strictly construed. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Burden on Those Excepting. — Those seeking to come within the exceptions to the open meetings law should have the burden of justifying their action. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Effect of Closed Meeting on Validity of Action Taken. — There is nothing in this Article which supports the contention that all action taken at a meeting of any governmental body of the State, or of one of its political subdivisions, is completely void if such meeting was not open to the public. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

Applied in Humble Oil & Ref. Co. v. Board of Aldermen, 17 N.C. App. 624, 195 S.E.2d 360 (1973).

Stated in Eggimann v. Wake County Bd. of Educ., 22 N.C. App. 459, 206 S.E.2d 754 (1974); Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977).

§ 143-318.2. All official meetings open to the public. — All official meetings of the governing and governmental bodies of this State and its political subdivisions, including all State, county, city and municipal commissions, committees, boards, authorities, and councils and any subdivision, subcommittee, or other subsidiary or component part thereof which have or claim authority to conduct hearings, deliberate or act as bodies politic and in the public interest shall be open to the public. And every meeting, assembly, or gathering together at any time or place of a majority of the members of such governing or governmental body for the purpose of conducting hearings, participating in deliberations or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of said body shall constitute an official meeting, but any social meeting or other informal assembly or gathering together of the members of any such body shall not constitute an official meeting unless called or held to evade the spirit and purposes of this Article. (1971, c. 638, s. 1.)

Legislative Intent. — The General Assembly, it appears, attempted to draft this section in such terms that it would cover (with a few specific exceptions) every meeting where the business of the people may be conducted. Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977).

Meetings of Faculty of University of North Carolina Law School. — See Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977).

Reasonable Public Notice. — In the absence of statutory provisions for notice, reasonable public notice of a board of education's meetings should be given, taking into consideration the urgency of the matter necessitating the meeting. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Applied in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-318.3. Executive, closed and private sessions. — (a) Any of the bodies specified in G.S. 143-318.1, by the votes of a majority of its members present, may, during any regular or special meeting when a quorum is present, hold an executive session and exclude the public while considering:

(1) Acquisition, lease, or alienation of property;

(2) Negotiations between public employers and their employees or representatives thereof as to employment;

(3) Matters dealing with patients, employees or members of the medical staff of a hospital or medical clinic (including but not limited to all aspects of admission, treatment, and discharge, all medical records, reports and summaries, and all charges, accounts and credit information pertaining to said patients; all negotiations, contracts, conditions, assignments, regulations and disciplines relating to employees; and all aspects of hospital management, operation and discipline relating to members of the medical staff);

(4) Any matter coming within the physician-patient, lawyer-client or any other privileged relationship;

(5) Conferences with legal counsel and other deliberations concerning the prosecution, defense, settlement or litigation of any judicial action or proceeding in which the governing or governmental body is a party or by which it is directly affected.

(b) This Article shall not be construed to prevent any governing or governmental body specified in G.S. 143-318.1 from holding closed sessions to consider information regarding the appointment, employment, discipline, termination or dismissal of an employee or officer under the jurisdiction of such body and to hear and consider testimony on a complaint against such employee or officer; provided, however, that final action on the discharge of any employee for cause after hearing shall be taken in open session if such discharge is within the exclusive jurisdiction of said governing body. Nor shall this Article be construed to prevent any board of education or governing body of any public educational institution, or any committee or officer thereof, from hearing, considering and deciding disciplinary cases involving students in closed session.

(c) When any county board of commissioners or the governing body of any municipal corporation or board of education is faced with the existence of a riot or with conditions indicating that a riot or public disorders are imminent, within the territorial jurisdiction of such board or governing body, the board of commissioners of such county or the governing body of such municipal corporation or board of education, as the case may be, may meet in private session with such law-enforcement officers and others invited to any such meeting, excluding other members of the public, for the purpose of considering and taking appropriate action deemed necessary to cope with the existing situation during any such emergency. (1971, c. 638, s. 1.)

Quoted in Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977).

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-318.4. Exceptions. — The agencies or groups following are excluded from the provisions of G.S. 143-318.2:

(1) The Council of State
(2) The Board of Awards
(3) The N.C. State Department of Correction
(4) The State Department of Correction
(5) All law-enforcement agencies
(6) Grand and petit juries
(7) All study, research and investigative commissions and committees including the Legislative Services Commission.
(8) All State agencies, commissions or boards exercising quasi-judicial functions during any meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding
(9) Every board enumerated in G.S. 150-9 and every board, commission, council or other body, or any committee thereof, authorized by statute to investigate, examine and determine the character and other qualifications of applicants for license to practice any profession in this State, or authorized to suspend or revoke licenses of, or to reprimand or take disciplinary action concerning any person licensed to engage in the practice of any profession in this State; provided, however, that nothing in this Article shall be construed to amend, repeal or supersede any statute, now existing or hereafter enacted, which requires a public hearing or other practice and procedure in any proceeding before any such board, commission or other body, or any committee thereof.
(10) Any committee or subcommittee of the General Assembly has the inherent right to hold an executive session when it determines that it is absolutely necessary to have such a session in order to prevent personal embarrassment or when it is in the best interest of the State; and in no event shall any final action be taken by any committee or subcommittee except in open session. (1971, c. 638, s. 1; 1973, c. 1262, s. 10.)

Editor's Note. — Section 150-9, referred to in subdivision (9), was repealed by Session Laws 1973, c. 1331.

A board of education cannot evade the provisions of statutes requiring its meetings to be open to the public merely by resolving itself into a committee of the whole. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Failure to Come within Exception (7). — Defendants, members of a board of education, failed to show that their closed session came within the exception provided by subdivision (7) of this section, where, prior to the closed session, eight names were placed in nomination to fill a vacant position on the board, and following the passage of a motion authorizing same, the members of the board were appointed a committee of the whole to study and investigate the names recommended. News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

Stated in Student Bar Ass'n Bd. of Governors v. Byrd, 32 N.C. App. 530, 232 S.E.2d 855 (1977).

§ 143-318.5. Advisory Budget Commission and appropriation committees of General Assembly; application of Article. — (a) The provisions of this Article shall not apply to meetings of the Advisory Budget Commission held for the purpose of actually preparing the budget required by the provisions of the Executive Budget Act (Article 1, Chapter 143, General Statutes of North Carolina), but nothing in this Article shall be construed to amend, repeal or supercede the provisions of G.S. 143-10 (or any similar statutes hereafter enacted) requiring public hearings to secure information on any and all estimates to be included in the budget and providing for other procedures and practices incident to the preparation and adoption of the budget required by the State Budget Act.

(b) Nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-14, relating to the meetings of the appropriations committees of the House of Representatives and the Senate of the General Assembly of North Carolina, and subcommittees thereof. (1971, c. 638, s. 1.)

§ 143-318.6. Mandamus and injunctive relief. — Any citizen denied access to a meeting required to be open by the provisions of this Article, in addition to other remedies, shall have a right to compel compliance with the provisions of this Article by application to a court of competent jurisdiction for restraining order, injunction or other appropriate relief. (1971, c. 638, s. 1.)

Application of Section Limited. — The provisions of this section were intended to apply only to a situation where a citizen has been refused access to a meeting required to be open. Eggimann v. Wake County Bd. of Educ., 22 N.C. App. 459, 206 S.E.2d 754, cert. denied, 285 N.C. 756, 209 S.E.2d 280 (1974).

Quoted in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

Cited in News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

§ 143-318.7. Disruptions. — Any person who willfully interrupts, disturbs, or disrupts any official meeting required to be open to the public by this Article and who, upon being directed to leave such meeting by the presiding officer thereof, willfully refuses to leave such meeting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment for not in excess of six months, pay a fine of two hundred fifty dollars ($250.00), or by both such fine and imprisonment. (1971, c. 638, s. 1.)

ARTICLE 34.

Local Affairs.

§ 143-319: Repealed by Session Laws 1973, c. 1262, s. 51.

Cross Reference. — As to transfer of functions of the Human Resources Division of the Department of Local Affairs to the Department of Human Resources, see § 143B-138.

Editor's Note. — Former Article 34, comprising §§ 143-317 through 143-328, and relating to the Board of Water Commissioners and water conservation and education, was repealed by Session Laws 1959, c. 779, s. 2.

§ 143-320. Definitions. — As used in this Article, unless the context otherwise requires:

"Council" means the Community Development Council.

"Department" means the Department of Natural Resources and Community Development.

"Secretary" means the Secretary of Natural Resources and Community Development.

"Recreation" means those interests that are diversionary in character and that aid in promoting entertainment, pleasure, relaxation, instruction, and other physical, mental, and cultural developments and experiences of a leisure nature, and includes all governmental, private nonprofit and commercial recreation forms of the recreation field and includes parks, conservation, recreation travel, the use of natural resources, wilderness and high density recreation types and the variety of recreation interests in areas and programs which are incorporated in this range. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51; 1977, c. 771, ss. 4, 8.)

Cross References. — As to the organization of the Department of Natural Resources and Community Development, see §§ 143B-275 through 143B-279. As to the Community Development Council, see §§ 143B-305 through 143B-307. As to the Parks and Recreation Council, see §§ 143B-311 through 143B-313.

Editor's Note. — The 1977 amendment substituted "Community Development Council" for "Community and Economic Development Council" in the first definition and "Natural Resources and Community Development" for "Natural and Economic Resources" in the second and third definitions.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§§ 143-321, 143-322: Repealed by Session Laws 1973, c. 1262, s. 51.

§ 143-323. Functions of Department of Natural Resources and Community Development. — (a) Recreation. — The Department of Natural Resources and Community Development shall have the following powers and duties with respect to recreation:

(1) To study and appraise the recreation needs of the State and to assemble and disseminate information relative to recreation.

(2) To cooperate in the promotion and organization of local recreation systems for counties, municipalities, and other political subdivisions of the State, to aid them in the administration, finance, planning, personnel, coordination and cooperation of recreation organizations and programs.

(3) To aid in recruiting, training, and placing recreation workers, and to promote recreation institutes and conferences.

(4) To establish and promote recreation standards.

(5) To cooperate with appropriate State, federal, and local agencies and private membership groups and commercial recreation interests in the promotion of recreation opportunities, and to represent the State in recreation conferences, study groups, and other matters of recreation concern.

(6) To accept gifts, bequests, devises, and endowments. The funds, if given as an endowment, shall be invested in securities designated by the donor, or if there is no such designation, in securities in which the State sinking fund may be invested. All such gifts, bequests, and devises and all proceeds from such invested endowments shall be used for carrying out the purposes for which they were made.

(7) To advise agencies, departments, organizations and groups in the planning, application and use of federal and State funds which are assigned or administered by the State for recreation programs and services on land and water recreation areas and on which the State renders advisory or other recreation services or upon which the State exercises control.

(8) To act jointly, when advisable, with any other State, local or federal agency, institution, private individual or group in order to better carry out the Department's objectives and responsibilities.

(b) Repealed by Session Laws 1977, c. 70, s. 32.

(c) Local Planning Assistance. — The Department shall have the following powers and duties with respect to local planning assistance:

(1) To provide planning assistance to municipalities and counties and joint and regional planning boards established by two or more governmental units in the solution of their local planning problems. Planning assistance as used in this section shall consist of making population, economic, land use, traffic, and parking studies and developing plans based thereon to guide public and private development and other planning work of a similar nature. Planning assistance shall also include the preparation of proposed subdivision regulations, zoning

ordinances, capital budgets, and similar measures that may be recommended for the implementation of such plans. The term planning assistance shall not be construed to include the providing of plans for specific public works.

(2) To receive and expend federal and other funds for planning assistance to municipalities and counties and to joint and regional planning boards, and to enter into contracts with the federal government, municipalities, counties, or joint and regional planning boards with reference thereto.

(3) To perform planning assistance, either through the staff of the Department or through acceptable contractual arrangements with other qualified State agencies or institutions, local planning agencies, or with private professional organizations or individuals.

(4) To assume full responsibility for the proper execution of a planning program for which a grant of State or federal funds has been made and for carrying out the terms of a federal grant contract.

(5) To cooperate with municipal, county, joint and regional planning boards, and federal agencies for the purpose of aiding and encouraging an orderly, coordinated development of the State.

(6) To establish and conduct, either with its own staff or through contractual arrangements with institutions of higher education, State agencies, or private agencies, training programs for those employed or to be employed in community development activities.

(d) Federal Assistance. — The Department, with the approval of the Governor, may apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual, and may comply with the terms, conditions, and limitations of the grant, in order to accomplish any of the purposes of the Department. Grant funds shall be expended pursuant to the Executive Budget Act.

(e) General. — The Department shall have the following general powers and duties.

(1) To study and to sponsor research on all aspects of local government and of relationships between the federal government, the State and local governments in North Carolina.

(2) To collect, collate, analyze, publish, and disseminate information necessary for the effective operation of the Department and useful to local government.

(3) To maintain an inventory of data and information, and to act as a clearinghouse of information and as a referral agency with respect to State, federal, and private services and programs available to local government; and to facilitate local participation in those programs by furnishing information, education, guidance, and technical assistance with respect to those programs.

(4) To assist in coordinating State and federal activities relating to local government.

(5) To assist local governments in the identification and solution of their problems.

(6) To assist local officials in bringing specific governmental problems to the attention of the appropriate State, federal, and private agencies.

(7) To advise and assist local governments with respect to intergovernmental contracts, joint service agreements, regional service arrangements, and other forms of intergovernmental cooperation.

(8) To inform and advise the Governor on the affairs and problems of local government and on the need for the administrative and legislative action with respect to local government. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51; 1977, c. 70, s. 32; c. 771, s. 4.)

Editor's Note. — The first 1977 amendment deleted subsection (b), relating to the law-and-order powers and duties of the Department.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory language of subsection (a).

Session Laws 1977, c. 70, s. 34, and c. 771, s. 22, contain severability clauses.

For note on coastal land use development and area-wide zoning, see 49 N.C.L. Rev. 866 (1971).

§ 143-324: Repealed by Session Laws 1973, c. 1262, s. 51.

§ 143-325. Functions of committees. — (a) Repealed by Session Laws 1973, c. 1262, s. 51.

(b) Committee on Law and Order. — The Committee on Law and Order shall have policy-making and supervisory authority over the policies, programs, and activities of the Department in the field of the administration of criminal justice in assisting and participating with State and local law-enforcement agencies, at their request, to improve law enforcement and the administration of criminal justice.

(c) Repealed by Session Laws 1973, c. 1262, s. 51. (1969, c. 1145, s. 1; 1973, c. 1262, s. 51.)

§ 143-326. Transfer of functions, records, property, etc. — (a) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the North Carolina Recreation Commission are transferred to the Department of Local Affairs, effective July 1, 1969. All statutory references to the "North Carolina Recreation Commission" or the "Recreation Commission" are amended to read "North Carolina Department of Local Affairs."

(b) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Governor's Committee on Law and Order are transferred to the Department of Local Affairs, effective July 1, 1969. All statutory references to the "Governor's Committee on Law and Order" are amended to read "North Carolina Department of Local Affairs."

(c) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Division of Community Planning of the Department of Conservation and Development are transferred to the Department of Local Affairs.

(d) Such portion of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the State Planning Task Force Division of the Department of Administration as the Governor may designate is transferred to the Department of Local Affairs, effective July 1, 1969.

(e) The transfers directed by subsections (a) through (d), above shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences or disputes arising incident to those transfers.

(f) No transfer of functions to the Department of Local Affairs provided for in this Article shall affect any action, suit, proceeding, prosecution, contract, lease, agreement, or other business transaction involving any of those functions that was initiated, undertaken, or entered into prior to or pending the time of the transfer, except that the Department shall be substituted for the agency from which the function was transferred, and as far as practicable the procedure provided for in this Article shall be employed in completing or disposing of the matter. All rules, regulations, and policies of the agencies from which powers, duties, and functions are herein transferred to the Department of Local Affairs shall continue in force as rules, regulations, and policies of the Department of

Local Affairs until altered pursuant to G.S. 143-320(9). (1969, c. 1145, s. 1; 1973, c. 1262, s. 51.)

Editor's Note. — Because this section relates to past events, no changes other than the deletion of an effective date at the end of subsection (c) have been made in it pursuant to the 1973 amendatory act, which reorganized the Department of Natural and Economic Resources.

It would seem that the reference to § 143-320(9) in subsection (f) of this section should be to § 143-322(9). That section, however, was repealed by Session Laws 1973, c. 1262, s. 51.

§ 143-327: Repealed by Session Laws 1973, c. 1262, s. 51.

§ 143-328: Reserved for future codification purposes.

ARTICLE 35.

Youth Service Commission.

§§ 143-329 to 143-333: Expired.

Editor's Note. — These sections, which were codified from Session Laws 1955, c. 904, expired by their own terms June 30, 1956.

ARTICLE 36.

Department of Administration.

§ 143-334. Short title. — This Article may be cited as the Department of Administration Act. (1957, c. 269, s. 1.)

State Government Reorganization. — The Department of Administration was transferred by former § 143A-82, enacted by Session Laws 1971, c. 864 and repealed by Session Laws 1975, c. 879, s. 46. For provisions as to the Department of Administration, see § 143B-366 et seq.

§ 143-335. Department of Administration created. — There is hereby created the Department of Administration. (1957, c. 269, s. 1.)

Cited in State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

§ 143-336. Definitions. — As used in this Article:

"Agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions, county and city boards of education, and other local public bodies.

"Department" means the Department of Administration, unless the context otherwise requires.

"Public buildings" means all buildings owned or maintained by the State in the City of Raleigh, but does not mean any building which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public buildings and grounds" means all buildings and grounds owned or maintained by the State in the City of Raleigh, but does not mean any building or grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Public grounds" means all grounds owned or maintained by the State in the City of Raleigh, but does not mean any grounds which a State agency other than the Department of Administration is required by law to care for and maintain.

"Secretary" means the Secretary of Administration, unless the context otherwise requires.

"State buildings" mean all State buildings, utilities, and other property developments except the State Legislative Building, railroads, highway structures, and bridge structures.

But under no circumstances shall this Article or any part thereof apply to the judicial or to the legislative branches of the State. (1957, c. 215, s. 2; c. 269, s. 1; 1963, c. 1, s. 6; 1971, c. 1097, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment deleted definitions of "Director" and "Division," inserted the definition of "Secretary" and substituted "Department of Administration" for "General Services Division" in the definitions of "public buildings," "public buildings and grounds" and "public grounds."

§§ 143-337 to 143-339: Repealed by Session Laws 1975, c. 879, s. 46.

§ 143-340. Powers and duties of Secretary. — The Secretary of Administration has the following powers and duties:

(1) To establish a meritorious service award system for State employee suggestions which may include cash awards to be paid from savings resulting from the adoption of employee suggestions, but in no case shall the cash award exceed ten percent (10%) of the savings resulting during the first year following adoption or a maximum of one thousand dollars ($1,000).

(2) to (9) Repealed by Session Laws 1975, c. 879, s. 46.

(10) To require reports from any State agency at any time upon any matters within the scope of the responsibilities of the Secretary or the Department.

(11) Repealed by Session Laws 1975, c. 879, s. 46.

(12) To enter the premises of any State agency; to inspect its property; and to examine its books, papers, documents, and all other agency records and copy any of them; and any State agency shall permit such entry, examination, and copying, and upon demand shall produce without unnecessary delay all books, papers, documents, and other records in its office and furnish information respecting its records and other matters pertaining to that agency and related to the responsibilities of the Department.

(13) Repealed by Session Laws 1975, c. 879, s. 46.

(14) To establish a coordinated system for transmission of information by communications between the various agencies, departments and institutions of the State, local, and federal government, and to provide equipment, personnel and systems designed and operated in such manner as to achieve economical and effective transmission and receipt of information necessary to the duties and responsibilities imposed upon the various agencies of the State, including a network for transmission of information for use in the administration of criminal justice as administered by the Department of Justice.

(15), (16) Repealed by Session Laws 1975, c. 879, s. 46.

(17) To supervise the work of janitors appointed by the General Assembly

to perform services in connection with the sessions of the General Assembly.

(18) To adopt reasonable rules and regulations with respect to the parking of automobiles on all public grounds, subject to the approval of the Governor and Council of State, and to enforce those rules and regulations. Any person who violates a rule or regulation concerning parking on public grounds is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court. Upon the allocation of parking spaces to any agency pursuant to such rules and regulations, the agency shall adopt written guidelines governing the individual assignment of such parking spaces by the agency. Such guidelines shall give first priority treatment to the physically handicapped and to car poolers and van poolers, however, first priority shall be given to those on call for duty at a time other than normal working hours. A copy of said guidelines shall be made available for inspection by any person upon request.

(19) Any motor vehicle parked in a state-owned parking lot, when such lot is clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance thereto, in violation of the "Rules and Regulations Governing State-Owned Parking Lots" dated September, 1968 or as amended, may be removed from such lot to a place of storage and the registered owner of such vehicle shall become liable for removal and storage charges. No person shall be held to answer in any civil or criminal action to any owner, lienholder, or other person legally entitled to the possession of any motor vehicle removed from such lots pursuant to this section except where such motor vehicle is willfully, maliciously or negligently damaged in the removal from aforesaid lot to place of storage.

(20) To use at all times such means as, in his opinion, may be effective in protecting all public buildings and grounds from fire.

(21) To serve as a special police officer and in that capacity to have the same power of arrest as the police officers of the City of Raleigh. Such authority may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, and in addition thereto the authority of a deputy sheriff may be exercised on property owned, leased or maintained by the State located in the County of Wake.

(22) To appoint as special police officers such reliable persons as he may deem necessary, and such officers shall have the same power of arrest as herein conferred upon the Secretary. Before the Secretary or the special police officers may exercise the power of arrest, they shall take an oath, to be administered by any person authorized to administer oaths, as required by law.

(23) Repealed by Session Laws 1975, c. 879, s. 46.

(24) To perform such additional duties as the Governor may direct. (1957, c. 215, s. 2; c. 269, s. 1; 1969, c. 627; c. 1267, s. 4; 1971, c. 280; c. 1097, s. 2; 1975, c. 204; c. 879, s. 46; 1977, c. 119; c. 288, s. 2.)

Editor's Note. — The first 1975 amendment added the last two sentences of subdivision (18).

The second 1975 amendment substituted "Secretary" for "Director" in the introductory paragraph, in subdivisions (5) and (10) and in two places in subdivision (22) and repealed subdivisions (1) through (9), (11), (13), (15), (16) and (23), all relating to general duties of the former Director of Administration.

The first 1977 amendment added the fourth sentence in subdivision (18).

The second 1977 amendment added present subdivision (1). Former subdivision (1), which read "To administer the Department of Administration," was repealed by Session Laws 1975, c. 879, s. 46.

§ 143-341. Powers and duties of Department. — The Department of Administration has the following powers and duties:

(1) Budget:

a. To exercise those powers and perform those duties which are delegated or assigned to it by the Director of the Budget pursuant to the Executive Budget Act.

b. To exercise those powers and perform those duties which were, at the time of the ratification of this Article, conferred by statute upon the former Budget Division.

(2) Purchase and Contract:

a. To exercise those powers and perform those duties which were, at the time of the ratification of this Article, conferred by statute upon the former Division of Purchase and Contract.

(3) Architecture and Engineering:

a. To examine and approve all plans and specifications for the construction or renovation of all State buildings, prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.

b. To prepare preliminary studies and cost estimates and otherwise to assist all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.

c. To supervise the letting of all contracts for the construction or renovation of all State buildings.

d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings; and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

(4) Real Property Control:

a. To prepare and keep current a complete and accurate inventory of all land owned or leased by the State or by any State agency. This inventory shall show the location, acreage, description, source of title and current use of all land (including swamplands or marshlands) owned by the State or by any State agency, and the agency to which each tract is currently allocated. Surveys may be made where necessary to obtain information for the purposes of this inventory. Accurate plats or maps of all such land may be prepared, or copies obtained where such maps or plats are available.

b. To prepare and keep current a complete and accurate inventory of all buildings owned or leased (in whole or in part) by the State or by any State agency. This inventory shall show the location, amount of floor space and floor plans of every building owned or leased by the State or by any State agency, and the agency to which each building, or space therein, is currently allocated. Floor plans of every such building shall be prepared or copies obtained where such floor plans are available, where needed for use in the allocation of space therein.

c. To obtain and deposit with the Secretary of State the originals of all deeds and other conveyances of real property to the State or to any State agency, copies of all leases wherein the State or any State agency is lessor or lessee, and certified copies of wills, judgments, and other instruments whereby the State or any State agency has acquired title to real property. Where an original of a deed, lease, or other instrument cannot be found, but has been recorded in the registry of office of the clerk of superior court of any county, a certified copy of such deed, conveyance, or instrument shall be obtained and deposited with the Secretary of State.

d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any contract entered into or any proceeding instituted contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

e. To make all sales of real property (including marshlands or swamplands) owned by the State or by any State agency, with the approval of the Governor and Council of State in each instance. All conveyances in fee by the State shall be executed in accordance with the provisions of G.S. 146-74 through 146-78. Any conveyance of land made or contract to convey land entered into without the approval of the Governor and Council of State is voidable in the discretion of the Governor and Council of State. The proceeds of all sales of swamplands or marshlands shall be dealt with in the manner required by the Constitution and statutes.

f. With the approval of the Governor and Council of State, to make all leases and rentals of land or buildings owned by the State or by any State agency, and to sublease land or buildings leased by the State or by any State agency from another owner, where such land or building owned or leased by the State or by any State agency is not needed for current use. The Governor, acting with the approval of the Council of State, may adopt rules and regulations (i) exempting from any or all of the requirements of this paragraph such classes of lease or rental transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph; and (iii) delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands; upon such approval of severance, the buildings and timber so affected shall be treated, for the purposes of this Chapter, as personal property. Any lease or rental agreement entered into contrary to the provisions of this paragraph is voidable in the discretion of the Governor and Council of State.

g. To allocate and reallocate land, buildings, and space in buildings to the several State agencies, in accordance with rules adopted by the Governor with the approval of the Council of State. Provided, that the authority granted in this paragraph shall not apply to the State Legislative Building and grounds.

h. To require any State agency to make reports regarding the land and buildings owned by it or allocated to it at such times and in such form as the Department may deem necessary.

i. To determine whether all deeds, judgments, and other instruments whereby title to real estate has been or may be acquired by the State or by any State agency have been properly recorded in the county wherein the real property is situated, and to make or cause to be made proper recordation of such instruments. The Department may have previously recorded instruments which conveyed title to or from the State or any State agency or officer reindexed, where necessary, to show the State of North Carolina as grantor or grantee, as the case may be, and the cost of such reindexing shall be paid from the State Land Fund.

j. To call upon the Attorney General for advice and assistance in the performance of any of the foregoing duties.

k. None of the provisions of this subdivision apply to highway or railroad rights-of-way or other interests or estates in land held for the same or similar purposes, or to the acquisition or disposition of such rights-of-way, interests, or estates in land.

l. To manage and control the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands of the State, pursuant to Chapter 146 of the General Statutes.

(5) Administrative Analysis:

a. To study the organization, methods, and procedures of all State agencies, to formulate plans for improvements in the organization, methods, and procedures of any agency studied, and to advise and assist any agency studied in effecting improvements in its organization, methods, and procedures.

b. To report to the Governor its findings and recommendations concerning improvements in the organization, methods, and procedures of any State agency, when such improvements cannot be effected by the cooperative efforts of the Department and the agency concerned.

c. To submit to the Governor for transmittal to the General Assembly recommended legislation where such legislation is necessary to effect improvements in the organization, methods, and procedures of any State agency.

(6) State and Regional Planning:

a. To assist the Director of the Budget in reviewing the capital improvements needs and requests of all State agencies, and in preparing a coordinated biennial capital improvements budget and longer range capital improvements programs.

b. In cooperation with State agencies and other public and private agencies, to collect, analyze, and keep up-to-date a comprehensive collection of economic and social data pertinent to State planning, which shall be available to State and local governmental agencies and private agencies.

c. To coordinate and review all planning activity relative to federal government requirements for general statewide or regional comprehensive program planning.

d. To make economic analyses, studies, and projections and to advise the Governor on courses of action desirable for the maintenance of a sound economy.

e. To encourage and assist in the development of the planning process within State and local governmental agencies.

f. To assist State agencies by providing them with basic information and technical assistance needed in preparing their short-range and long-range programs.

g. To develop and maintain liaison and cooperative arrangements with federal, interstate, State, and private agencies and organizations in the interest of obtaining information and assistance with respect to State and regional planning.

h. To develop and maintain a comprehensive plan for the development of the State, representing the coordinated efforts and contributions of all participating planning groups.

i. In cooperation with the counties, the cities and towns, the federal government, multi-state commissions and private agencies and organizations, to develop a system of multi-county, regional planning districts to cover the entire State, and to assist in preparing for those districts comprehensive development plans coordinated with the comprehensive development plan for the State.

(7) Development Programs:

a. To participate in development programs, to enter into contracts, formulate plans and to do all things necessary to implement development programs in any area of the State.

b. To accept, receive and disburse, in furtherance of its functions, any funds, grants and services made available by the federal government and its agencies, any county, municipality, private or civic sources.

(8) General Services:

a. To locate, maintain and care for public buildings and grounds; to establish, locate, maintain, and care for walks, driveways, trees, shrubs, flowers, fountains, monuments, memorials, markers, and tablets on public grounds; and to beautify the public grounds.

b. To provide necessary and adequate cleaning and janitorial service, elevator operation service, and other operation or maintenance services for the public buildings and grounds.

c. To provide necessary night watchmen for the public buildings and grounds.

d. To make prompt repair of all public buildings and the equipment, furniture, and fixtures thereof; and to establish and operate shops for that purpose.

e. To keep in repair, out of funds appropriated for that purpose, the furniture of the halls of the Senate and House of Representatives and the rooms of the Capitol used by the officers, clerks, and other employees of the General Assembly.

f. Struck out by Session Laws 1959, c. 68, s. 3.

g. To establish and operate a central mailing system for all State agencies, and in connection therewith and in the discretion of the

Secretary, to make application for and procure a post-office substation for that purpose, and to do all things necessary in connection with the maintenance of the central mailing system. The Secretary may allocate and charge against the respective departments and agencies their proportionate parts of the cost of the maintenance of the central mailing system.

h. To provide necessary and adequate messenger service for the State agencies served by the Department. However, this may not be construed as preventing the employment and control of messengers by any State agency when those messengers are compensated out of the funds of the employing agency.

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.
2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.
3. With the approval of the Governor, to require any State agency to transfer ownership, custody, and control of any or all passenger motor vehicles within the ownership, custody, or control of that agency to the Department.
4. To maintain, store, repair, dispose of, and replace state-owned motor vehicles under the control of the Department.
5. Upon proper requisition and proper showing of need for use upon State business only, to assign suitable transportation, either on a temporary or permanent basis, to any State agency.
6. To allocate and charge against each State agency to which transportation is furnished, on a basis of mileage or of rental, its proportionate part of the cost of maintenance and operation of the motor pool.
7. To adopt, with the approval of the Governor and Council of State, reasonable rules and regulations for the efficient and economical operation, maintenance, repair, and replacement of all state-owned motor vehicles under the control of the Department, and to enforce those rules and regulations; and to adopt, with the approval of the Governor and Council of State, reasonable rules and regulations regulating the use of private motor vehicles upon State business by the officers and employees of State agencies, and to enforce those rules and regulations. The Department, with the approval of the Governor and Council of State, may delegate to the respective heads of the agencies to which motor vehicles are permanently assigned by the Department the duty of enforcing the rules and regulations adopted by the Department pursuant to this paragraph. Any person who violates a rule or regulation adopted by the Department and approved by the Governor and Council of State is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court.

8. To require any State agency to keep such records and make such reports to the Secretary as the Secretary may require regarding motor vehicle use.
9. To acquire motor vehicle liability insurance on all state-owned motor vehicles under the control of the Department.
10. To contract with the appropriate State prison authorities for the furnishing, upon such conditions as may be agreed upon from time to time between such State prison authorities and the Secretary, of prison labor for use in connection with the operation of a central motor pool and related activities.

j. To establish and operate a central telephone system, central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules and regulations adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency.

k. To require the State agencies and their officers and employees to utilize the central facilities and services which are established; and to adopt, with the approval of the Governor and Council of State, reasonable rules, regulations, and procedures requiring the utilization of such central facilities and services, and governing their operation and the charges to be made for their services.

l. To provide necessary information service for visitors to the Capitol.

m. To perform such additional duties and exercise such additional powers as may be assigned to it by statute or by the Governor.

(9) Systems Management: To establish and operate automated data processing centers to serve two or more State agencies on a cost-sharing basis, if the Council of State after appropriate investigation deems it advisable from the standpoint of efficiency and economy to establish such centers, and:

a. To allocate and charge against each State agency for which services are performed, on a time basis, its proportionate part of the cost of maintenance and operation of said center.

b. With approval of the Council of State, to require any State agency to be served to transfer to the automated data processing center ownership, custody, and/or control of automated data processing equipment, supplies, and positions no longer required by the served agency as a result of the use of said centers.

c. To adopt, with approval of the Council of State, reasonable rules and regulations for the efficient and economical operation of said automated data processing centers.

d. To adopt, with approval of the Council of State, policies, procedures, criteria, standards, plans, and rules and regulations for cooperative use of existing automated data processing equipment and personnel on a cost-reimbursable basis to facilitate more efficient and economic use of automated data processing resources whether located in the Department of Administration, in other State agencies, or in state-supported institutions.

Nothing in this section shall be construed to prescribe what agency programs to satisfy agency objectives, either existing or in the future, are to be undertaken; nor to remove from the control and administration of the agencies the responsibility for such program efforts whether such efforts are required specifically by statute or administered under the general program authority and responsibilities of the agencies.

e. To develop and promote training programs to upgrade the capability of technical and managerial personnel in automated data processing functions.

f. No data of a confidential nature, as defined in the General Statutes, shall be entered into or processed through any cost sharing data processing center, which may be established under this subdivision, until safeguards for their security satisfactory to the agency head and the Council of State have been designed and installed and are fully operational. No part of G.S. 143-341(9) in any way alters or affects the provisions of G.S. 147-58. (1957, c. 215, s. 2; c. 269, s. 1; 1959, c. 683, ss. 2-4; c. 1326; 1963, c. 1, s. 5; 1965, c. 1023; 1969, c. 1144, s. 2; 1971, c. 1097, s. 3; 1975, c. 399, ss. 1, 2; c. 879, s. 46.)

Editor's Note. — The first 1975 amendment deleted "metes and bounds" following "acreage," and "condition, current value," preceding "and current use" in the second sentence of paragraph a of subdivision (4), substituted "may" for "shall" in the third and fourth sentences of that paragraph and substituted "and floor plans" for "condition, floor plans, and current value" in the second sentence of paragraph b of subdivision (4).

The second 1975 amendment substituted "Budget Division" for "Budget Bureau" at the end of paragraph b of subdivision (1), rewrote paragraph i 2 of subdivision (8), substituted "Department" for "General Services Division" at the end of paragraph i 3 and in the last sentence of paragraph j of subdivision (8) and substituted "Secretary" for "Director" and "Department" for "Division" throughout subdivision (8).

Session Laws 1971, c. 1097, s. 5.1, provides: "This act shall not apply to the Police Information Network established under Chapter 114 of the General Statutes."

For note on coastal land use development and area-wide zoning, see 49 N.C.L. Rev. 866 (1971).

State Government Reorganization. — The General Services Division was transferred to the Department of Administration by former § 143A-82, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1975, c. 879, s. 46. For present provisions as to the powers and duties of the Department of Administration, see §§ 143B-367, 143B-368.

No Carte Blanche to Condemn Property. — Where plaintiff argued that § 146-22 et seq. and subdivision (4)d of this section give Department (with the approval of the Governor and Council of State) carte blanche to condemn property, the Supreme Court held that the wording of the statutes, their legislative history, and the actualities of political and economic life make it clear that the General Assembly did no such thing. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Highway Rest Area Structure. — See opinion of Attorney General to Mr. John Davis, Chief Engineer, State Highway Commission, 40 N.C.A.G. 541 (1970).

Applied in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143-342. Rules governing allocation of property and space. — The Governor, with the approval of the Council of State, shall adopt such reasonable rules, regulations, and procedures as he deems necessary concerning the allocation and reallocation by the Department of land, buildings, and space within buildings to and among the several State agencies. (1957, c. 269, s. 1.)

§ 143-343. General Services Division. — If the Governor and Council of State at any time determine, pursuant to G.S. 129-11, that the General Services Division should be made a part of the Department of Administration, the powers and duties given the Director of General Services by statute shall thereafter be deemed a part of the statutory powers and duties of the Director of Administration, and the powers and duties given the General Services Division by statute shall thereafter be deemed a part of the statutory powers and duties of the Department of Administration. The head of the General Services Division shall thereafter be appointed and removed, and his salary shall be fixed, in the same manner prescribed for other division heads. Upon the accomplishment of such transfer, the General Services Division shall thereafter be in all respects a part of the Department of Administration and subject to the supervision and control of the Director of Administration. (1957, c. 269, s. 1.)

Editor's Note. — Section 129-11, referred to in this section, was repealed by Session Laws 1971, c. 1097, s. 5.

Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1975, c. 879, s. 46.

§ 143-344. Transfer of functions, property, records, etc. — (a) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Budget Bureau are hereby transferred to the Department of Administration, effective July 1, 1957. All statutory references to the "Budget Bureau" or the "Bureau of the Budget" shall be deemed to refer to the Department of Administration.

(b) All of the powers, duties, functions, records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments, and executory contracts of the Division of Purchase and Contract are hereby transferred to the Department of Administration, effective July 1, 1957. All statutory references to the "Division of Purchase and Contract" or the "Purchase and Contract Division" shall be deemed to refer to the Department of Administration.

(c) The transfers directed by subsections (a) and (b) above, shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences or disputes arising incident to such transfers.

(d) Insofar as practical the expenses necessary to carry out the provisions of this Article shall, during the 1957-1959 biennium, be provided out of appropriations made to the presently existing agencies the functions of which will be transferred to the Department of Administration; and in the event additional funds are necessary to carry out the provisions of this Article the Governor with the approval of the Council of State and the Advisory Budget Commission is hereby authorized to appropriate such additional necessary expenses from the Contingency and Emergency Fund. (1957, c. 269, s. 1.)

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1975, c. 879, s. 46.

§ 143-345. Saving clause. — No transfer of functions to the Department of Administration provided for in this Article shall affect any action, suit, proceeding, prosecution, contract, lease, or other business transaction involving such a function which was initiated, undertaken, or entered into prior to or pending the time of the transfer, except that the Department shall be substituted for the agency from which the function was transferred, and so far as practicable the procedure provided for in this Article shall be employed in completing or disposing of the matter. (1957, c. 269, s. 1.)

§ 143-345.1. Rules and regulations. — The Governor, with the approval of the Council of State, shall adopt reasonable rules and regulations governing the use, care, protection, and maintenance of the public buildings and grounds (other than parking). Any person who violates a rule or regulation adopted by the Governor with the approval of the Council of State is guilty of a misdemeanor, and upon conviction is punishable in the discretion of the court. (1957, c. 215, s. 2; 1971, c. 1097, s. 4.)

Editor's Note. — The above section was formerly § 129-6. It was transferred and renumbered § 143-343 by Session Laws 1971, c. 1097, s. 4. Since the section originally codified as § 143-343 has not been repealed, the section transferred by the 1971 act has been renumbered § 143-345.1.

§ 143-345.2. Disorderly conduct in and injury to public buildings and grounds. — Any person who commits a nuisance or conducts himself in a disorderly manner in or around any public building or grounds, or defaces or injures any public building or grounds, is guilty of a misdemeanor and upon conviction is punishable in the discretion of the court. (1957, c. 215, s. 2; 1971, c. 1097, s. 4.)

Editor's Note. — The above section was formerly § 129-7. It was transferred and renumbered § 143-344 by Session Laws 1971, c. 1097, s. 4. Since the section originally codified as § 143-344 has not been repealed, the section transferred by the 1971 act has been renumbered § 143-345.2.

§ 143-345.3. Construction and repair of public buildings; use of Contingency and Emergency Fund. —It is lawful to resort to the Contingency and Emergency Fund provided in the Appropriation Act for financial aid in the construction, alteration, renovation, or repair of any public building, when in the opinion of the Governor and Council of State it is necessary to construct, alter, renovate, or repair such building. (1957, c. 215, s. 2; 1971, c. 1097, s. 4.)

Editor's Note. — The above section was formerly § 129-8. It was transferred and renumbered § 143-345 by Session Laws 1971, c. 1097, s. 4. Since the section originally codified as § 143-345 has not been repealed, the section transferred by the 1971 act has been renumbered § 143-345.3.

§ 143-345.4. Moore and Nash squares and other public lots. — The governing body of the City of Raleigh is authorized, at its own expense, to grade, to lay out in walks, to plant with trees, shrubbery, and flowers and otherwise to adorn Moore and Nash squares and to that end has the general charge and management of these squares. The governing body may manage and improve in like manner any of the vacant lots within the city limits which belong to the State and which are not otherwise appropriated, subject to the approval of the Governor and Council of State. The governing body may not prevent the free access of the public to such squares or lots during reasonable hours.

Whenever, in the opinion of the Secretary, the governing body is not properly keeping the squares or lots which it has taken in charge under this section, the

Secretary shall call the matter to the attention of the governing body, and if the governing body then fails for a period of 60 days to begin to take proper care of the squares or lots, the Governor and Council of State may repossess them and proceed to manage and control them for the preservation of such property.

In the event that the use of these squares and lots is at any time needed by the State, the license of the City of Raleigh to control and manage them shall terminate six months after notice given by the Governor and Council of State to the governing body of the city, and possession shall be promptly surrendered to the State. (1957, c. 215, s. 2; 1971, c. 1097, s. 4; 1975, c. 879, s. 46.)

Editor's Note. — The above section was formerly § 129-9. It was transferred and renumbered § 143-345.1 by Session Laws 1971, c. 1097, s. 4, and has been renumbered § 143-345.4 by the codifiers. See Editor's notes under §§ 143-345.1 through 143-345.3.

The 1975 amendment substituted "Secretary" for "Director" in two places in the second paragraph.

§ 143-345.5. Program for location and construction of future public buildings. — The Department of Administration is hereby authorized, empowered, and directed to formulate a long range building policy program and shall cooperate with the governing board of the City of Raleigh in zoning property adjacent to or in the vicinity of the Capitol Square when and if the City of Raleigh desires to zone said property. If the Department of Administration is of opinion that property adjacent to or in the vicinity of the Capitol Square will, in the future, be needed for State building purposes, it shall so advise the governing body of the City of Raleigh. At such times as the governing body of the City of Raleigh shall rezone property adjacent to or within four blocks of the State Capitol, it shall request an opinion from the Department of Administration as to whether the Department finds a future need for such property for State building purposes. In the event that the governing board of the City of Raleigh is informed by the Department of Administration that any property herein covered be needed for building purposes by the State in the future, the governing body of the City of Raleigh shall give full consideration to such opinion of the Department before making any rezoning order. (1951, c. 1132; 1957, c. 215, s. 2; 1971, c. 1097, s. 4.)

Editor's Note. — The above section was formerly § 129-12. It was transferred and renumbered § 143-345.2 by Session Laws 1971, c. 1097, s. 4, and has been renumbered § 143-345.5 by the codifiers. See Editor's notes under §§ 143-345.1 through 143-345.3.

§ 143-345.6. Land records management program. — (a) The Secretary of Administration shall establish a land records management program for the purposes (i) of advising registers of deeds, local tax officials, and local planning officials about sound management practices, and (ii) of establishing greater uniformity in local land records systems. The management program shall consist of the activities provided for in subsections (b), (c), (d), and (e) below, and other related activities essential to the effective conduct of the management program.

(b) The Secretary shall, in cooperation with the Secretary of Cultural Resources, develop recommended standards and specifications for the reproduction of records by photography, microphotography, and by other means, and for the security of recorded documents. The recommended standards and specifications developed shall take into account the needs of the general public, space requirements of local offices, the costs of various filming and recording technologies, personnel available to staff local records offices, and the need for permanency of records affecting title to land. The recommended standards and specifications shall not be binding upon the offices of local governments to which they apply.

(c) Mapping programs.

(1) The Secretary shall, in cooperation with the Secretary of the Department of Natural Resources and Community Development, conduct a program for the preparation of county base maps pursuant to standards prepared by the Department of Natural Resources and Community Development.

(2) The Secretary shall, in cooperation with the Secretary of Revenue, conduct a program for the preparation of county property-line maps under the direction of qualified surveyors pursuant to standards prepared by the Departments of Revenue and Natural Resources and Community Development.

(d) Upon the joint request of any board of county commissioners and the register of deeds and subject to available resources of personnel and funds, the Secretary shall make a management study of the office of register of deeds, using assistance from the Office of State Personnel. At the conclusion of the study, the Secretary shall make nonbinding recommendations to the board, the register of deeds, and to the General Assembly.

(e) The Secretary, in cooperation with the Secretary of Cultural Resources and in accordance with G.S. 121-5(c) and G.S. 132-8.1, shall undertake research and provide advice and technical assistance to local governments on the following aspects of land records management:

(1) Uniform indexing of land records;
(2) Uniform recording and indexing procedures for maps, plats, and condominiums;
(3) Centralized recording systems;
(4) Filming, filing, and recording techniques and equipment; and
(5) Computerized land records systems.

(f) An advisory committee on land records is created to assist the Secretary in administering the land records management program. The Governor shall appoint 12 members to the committee; one member shall be appointed from each of the organizations listed below from persons nominated by the organization:

(1) The North Carolina Association of Assessing Officers;
(2) The North Carolina Section of the American Society of Photogrammetry;
(3) The North Carolina Chapter of the American Institute of Planners;
(4) The North Carolina Section of the American Society of Civil Engineers;
(5) The North Carolina Tax Collectors' Association;
(6) The North Carolina Association of Registers of Deeds;
(7) The North Carolina Bar Association;
(8) The North Carolina Society of Land Surveyors; and
(9) The North Carolina Association of County Commissioners.

In addition, three members from the public at large shall be appointed. The members of the committee shall be appointed for four-year terms, except that the initial terms for members listed in positions (1) through (4) above and for two of the members-at-large shall be two years; thereafter all appointments shall be for four years. The Governor shall appoint the chairman, and the committee shall meet at the call of the chairman. The Governor in making the appointments shall try to achieve geographical and population balance on the advisory committee; one third of the appointments shall be persons from the most populous counties in the State containing approximately one third of the State's population, one third from the least populous counties containing approximately one third of the State's population, and one third shall be from the remaining moderately populous counties containing approximately one third of the State's population. Each organization shall nominate one nominee each from the more populous, moderately populous, and less populous counties of the State. The members of the committee shall receive per diem and subsistence and travel allowances as provided in G.S. 138-5. (1977, c. 771, s. 4; c. 932, s. 1.)

Editor's Notes. — Session Laws 1977, c. 932, s. 3, provides that the act shall expire on July 1, 1981, unless further extended prior to that time.

Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Natural and Economic Resources" in this section as enacted by Session Laws 1977, c. 932.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

ARTICLE 37.

Salt Marsh Mosquito Control.

§ 143-346: Repealed by Session Laws 1973, c. 476, s. 183.

§ 143-347. Department of Human Resources to advise Commission for Health Services. — It shall be the duty of the Department of Human Resources to advise the Commission for Health Services concerning all aspects of the salt marsh mosquito problem in North Carolina. (1955, c. 1197, s. 2; 1957, c. 831, s. 2; 1973, c. 476, ss. 128, 183.)

ARTICLE 37A.

Marine Science Council.

§§ 143-347.1 to 143-347.5: Repealed by Session Laws 1975, c. 879, s. 33.

Cross Reference. — For present provisions as to the North Carolina Marine Science Council, see §§ 143B-389, 143B-390.

§§ 143-347.6 to 143-347.9: Reserved for future codification purposes.

ARTICLE 37B.

Marine Resources Center Administrative Board.

§ 143-347.10. Administrative Board created. — There is hereby created and established within the North Carolina Marine Science Council a board to be known as the North Carolina Marine Resources Center Administrative Board. Appointment to the North Carolina Marine Resources Center Administrative Board does not constitute appointment to or membership in the Marine Science Council. (1975, c. 590.)

§ 143-347.11. Membership; terms; expenses. — (a) The Marine Resources Center Administrative Board shall consist of 16 voting members representing the following institutions, agencies and professions and appointed by the Governor from nominations submitted as follows:

(1) Four members of the North Carolina Marine Science Council nominated by the North Carolina Marine Science Council to serve as ex officio members of the Board.

(2) The Secretary of the Department of Natural Resources and Community Development and the Secretary of the Department of Administration or their designees shall serve as ex officio members of the Board.

(3) One representative of the office of the University of North Carolina Sea Grant Program nominated by the executive director of the University of North Carolina Sea Grant Program.

(4) One representative who shall be actively engaged with and have experience in a marine-based industry nominated by the Governor.

(5) One representative actively engaged in teaching classes in marine vocational education in the community college system nominated by the president of the North Carolina Department of Community Colleges.

(6) One representative actively engaged in marine vocational education at the high school level nominated by the Superintendent of Public Instruction.

(7) One representative of Dare County nominated by the Board of County Commissioners of Dare County.

(8) One representative of Carteret County nominated by the Board of County Commissioners of Carteret County.

(9) One representative of New Hanover County nominated by the Board of County Commissioners of New Hanover County.

(10) Three representatives of the University of North Carolina nominated by the President of the University of North Carolina upon the recommendation of the University Marine Science Council.

Membership on the Marine Resources Center Administrative Board shall become vacant automatically if a member ceases to qualify for nomination to his seat under the terms of this subsection. In the event of a vacancy occurring during a term of office the seat shall be filled in the same manner as the original appointment and shall be for the balance of the unexpired term.

(b) Membership on the Marine Resources Center Administrative Board and on the North Carolina Marine Science Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(c) The members shall serve staggered terms of office of six years. At the expiration of each member's term, the Governor shall reappoint or replace the member with a new member of like qualifications in accordance with the procedure established in subsection (a). The initial term shall be determined by the Governor in accordance with customary practice but four of the initial members shall be appointed for four-year terms and four for two-year terms.

(d) In the event of a vacancy arising otherwise than by expiration of term, the Governor shall appoint a successor of like qualifications in accordance with the procedure established in subsection (a), who shall then serve the remainder of his predecessor's term.

(e) The chairman of the Board shall be designated by the Governor from among the members of the Board to serve as chairman at the pleasure of the Governor.

(f) The chairman and members of the Board shall serve without compensation for their services, but shall be entitled to reimbursement for the actual and necessary expenses incurred in the performance of their official duties to the same extent as allowed other State officers. (1975, c. 590; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (2) of subsection (a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143-347.12. Rules of procedure; meetings; cooperation of other agencies. — The Board shall adopt its own rules of procedure and shall meet at such times and in such places as it may deem necessary to carry out its functions. The Board is authorized to secure directly from any executive department, agency, subdivision or independent instrumentality of State or local governments, any information it deems necessary to carry out its functions. Each department, agency, subdivision and independent instrumentality of State or local government is authorized to cooperate with the Board, and, to the extent permitted by law, to furnish information to the Board, as the Board deems necessary, upon request made by the chairman. (1975, c. 590.)

§ 143-347.13. Duties and responsibilities. — The Board shall have the following duties and responsibilities:

(1) To adopt goals and objectives for the centers and continually to review and revise these goals and objectives.

(2) To review and submit to the Secretary of the Department of Administration for approval requests for use of the center facilities and to advise the Secretary of the Department of Administration on the most appropriate utilization consistent with the goals and objectives of the center and the current overall State plan provided by the Marine Science Council.

(3) To continually review and evaluate the types of projects and programs being carried out in the center facilities and to determine if the operation of the facilities is in compliance with the established goals and objectives.

(4) To recommend to the Secretary of the Department of Administration such policies and procedures needed to assure effective staff performance and proper liaison between center facilities in carrying out the overall purposes of the center programs.

(5) To report annually to the Marine Science Council on the overall center operation and solicit from the Marine Science Council suggestions for program improvement.

(6) To review center budget submissions to the Secretary of the Department of Administration for review and approval and inclusion in the budget request.

(7) To recruit, and recommend to the Secretary of the Department of Administration, candidates for the positions of program administrator and the three center administrators. (1975, c. 590.)

§ 143-347.14. Staff and financial support. — The Secretary of the Department of Administration shall furnish such staff and financial support to the Board as may be necessary to carry out its functions from funds appropriated or available for these purposes. (1975, c. 590.)

ARTICLE 38.

Water Resources.

Repeal of Article. — This Article is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§§ **143-348, 143-349:** Repealed by Session Laws 1967, c. 892, s. 2.

Cross Reference. — For present provisions as to water and air resources, see § 143-211 et seq.

§ **143-350. Definitions.** — Definitions as used in this Article:

"Environmental Management Commission" means the Environmental Management Commission created by G.S. 143-214.

"Department" means the Department of Natural Resources and Community Development created by G.S. 143-212. (1959, c. 779, s. 1; 1967, c. 892, s. 12; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Water and Air Resources" in the definition of "Department."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Sections 143-212 and 143-214, referred to in this section, were repealed by Session Laws 1973, c. 1262, s. 23. As to creation of the Department of Natural Resources and Community Development, see § 143B-276. As to creation of the Environmental Management Commission, see § 143B-282.

For article on "Introduction to Water Use Law in North Carolina," see 46 N.C.L. Rev. 1 (1967).

State Government Reorganization. — The former Board of Water and Air Resources was transferred to the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development) by former § 143A-120, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1973, c. 1262, s. 86.

The former Department of Water and Air Resources was transferred to the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development) by former § 143A-119, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1973, c. 1262, s. 86.

§ **143-351:** Repealed by Session Laws 1967, c. 892, s. 2.

§ **143-352. Purpose of Article.** — The purpose of this Article is to create a State agency to coordinate the State's water resource activities; to devise plans and policies and to perform the research and administrative functions necessary for a more beneficial use of the water resources of the State, in order to insure improvements in the methods of conserving, developing and using those resources. (1959, c. 779, s. 1.)

§ **143-353:** Repealed by Session Laws 1967, c. 892, s. 2.

§ **143-354. Ordinary powers and duties of the Environmental Management Commission.** — (a) Powers and Duties in General. — Except as otherwise specified in this Article, the powers and duties of the Environmental Management Commission shall be as follows:

(1) The Environmental Management Commission shall carry out a program of planning and education concerning the most beneficial long-range conservation and use of the water resources of the State. It shall investigate the long-range needs of counties and municipalities and other local governments for water supply storage available in federal projects.

(2) The Environmental Management Commission shall advise the Governor as to how the State's present water research activities might be coordinated.

(3) The Environmental Management Commission, based on information available, shall notify any municipality or other governmental unit of potential water shortages or emergencies foreseen by the Environmental Management Commission affecting the water supply of such municipality or unit together with the Environmental

Management Commission's recommendations for restricting and conserving the use of water or increasing the water supply by or in such municipality or unit. Failure reasonably to follow such recommendations shall make such municipality or other governmental unit ineligible to receive any emergency diversion of waters as hereinafter provided.

(4) The Environmental Management Commission is authorized to call upon the Attorney General for such legal advice as is necessary to the functioning of the Environmental Management Commission.

(5) Recognizing the complexity and difficulties attendant upon the recommendation of the General Assembly of fair and beneficial legislation affecting the use and conservation of water, the Environmental Management Commission shall solicit from the various water interests of the State their suggestions thereon.

(6) The Environmental Management Commission may hold public hearings for the purpose of obtaining evidence and information and permitting discussion relative to water resources legislation and shall have the power to subpoena witnesses therefor.

(7) All recommendations for proposed legislation made by the Environmental Management Commission shall be available to the public.

(8) The Environmental Management Commission shall adopt such rules and regulations as may be necessary to carry out the purposes of this Article.

(9) Any member of the Environmental Management Commission or any person authorized by it, shall have the right to enter upon any private or public lands or waters for the purpose of making investigations and studies reasonably necessary in the gathering of facts concerning streams and watersheds, subject to responsibility for any damage done to property entered.

(10) The Environmental Management Commission is authorized to provide to federal agencies the required assurances, subject to availability of appropriations by the General Assembly or applicable funds or assurances from local governments, of nonfederal cooperation for water supply storage and other congressionally authorized purposes in federal projects.

(11) The Environmental Management Commission is authorized to assign or transfer to any county or municipality or other local government having a need for water supply storage in federal projects any interest held by the State in such storage, upon the assumption of repayment obligation therefor, or compensation to the State, by such local government. The Environmental Management Commission shall also have the authority to reassign or transfer interests in such storage held by local governments, if indicated by the investigation of needs made pursuant to subsection (a)(1) of this section, subject to equitable adjustment of financial responsibility.

(b) Declaration of Water Emergency. — Upon the request of the governing body of a county, city or town the Environmental Management Commission shall conduct an investigation to determine whether the needs of human consumption, necessary sanitation and public safety require emergency action as hereinafter provided. Upon making such determination, the Environmental Management Commission shall conduct a public hearing on the question of the source of relief water after three days' written notice of such hearing has been given to any persons having the right to the immediate use of water at the point from which such water is proposed to be diverted. After determining the source of such relief water the Environmental Management Commission shall then notify the

Governor and he shall have the authority to declare a water emergency in an area including said county, city or town and the source or sources of water available for the relief hereinafter provided; provided, however, that no emergency period shall exceed 30 days but the Governor may declare any number of successive emergencies upon request of the Environmental Management Commission.

(c) Water Emergency Powers and Duties of the Environmental Management Commission. — Whenever, pursuant to this Article, the Governor has declared the existence of a water emergency within a particular area of the State, the Environmental Management Commission shall have the following duties and powers to be exercised only within said area and only during such time as the Governor has, pursuant to this Article, designated as the period of emergency:

(1) To authorize any county, city or town in which an emergency has been declared to divert water in the emergency area sufficient to take care of the needs of human consumption, necessary sanitation and public safety. Provided, however, there shall be no diversion of waters from any stream or body of water pursuant to this Article unless the person controlling the water or sewerage system into which such waters are diverted shall first have limited and restricted the use of water in such water or sewerage system to human consumption, necessary sanitation and public safety and shall have effectively enforced such restrictions. Diversion of waters shall cease upon the termination of the water emergency or upon the finding of the Environmental Management Commission that the person controlling the water or sewerage system using diverted waters has failed to enforce effectively the restrictions on use to human consumption and necessary sanitation and public safety. In the event waters are diverted pursuant to this Article, there shall be no diversion to the same person in any subsequent year unless the Environmental Management Commission finds as fact from evidence presented that the person controlling the water or sewerage system has made reasonable plans and acted with due diligence pursuant thereto to eliminate future emergencies by adequately enlarging such person's own water supply.

(2) To make such reasonable rules and regulations governing the conservation and use of diverted waters within the emergency area as shall be necessary for the health and safety of the persons who reside within the emergency area; and the violation of such rules and regulations during the period of the emergency shall constitute a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than one year or both within the discretion of the court; provided, however, that before such rules and regulations shall become effective, they shall be published in not less than two consecutive issues of not less than one newspaper generally circulated in the emergency area.

(d) Temporary Rights-of-Way. — When any diversion of waters is ordered by the Environmental Management Commission pursuant to this Article, the person controlling the water or sewerage system into which such waters are diverted is hereby empowered to lay necessary temporary water lines for the period of such emergency across, under or above any and all properties to connect the emergency water supply to an intake of said water or sewerage system. The route of such water lines shall be prescribed by the Environmental Management Commission.

(e) Compensation for Water Allocated during Water Emergency and Temporary Rights-of-Way. — Whenever the Environmental Management Commission, pursuant to this Article has ordered any diversion of waters, the person controlling the waters or sewerage system into which such waters are diverted shall be liable to all persons suffering any loss or damage caused by or resulting from the diversion of such waters or caused by or resulting from the laying of temporary water lines to effectuate such diversion. The Environmental Management Commission, before ordering such diversion, shall require that the person against whom liability attaches hereunder to post bond with a surety approved by the Environmental Management Commission in an amount determined by the Environmental Management Commission and conditioned upon the payment of such loss or damage. (1959, c. 779, s. 1; 1967, c. 1071, ss. 1, 2; 1973, c. 1262, s. 23.)

Cross Reference. — See also § 143-215.3.

§ 143-355. Transfer of certain powers, duties, functions and responsibilities of the Department of Conservation and Development and of the Director of said Department. — (a) Transfer Generally. — There are hereby transferred to the Department of Water Resources those powers, duties, functions and responsibilities relating to water resources now vested in the Department of Conservation and Development of the State of North Carolina, and the Director thereof.

(b) Functions to Be Performed. — It shall be the duty of the Department of Natural Resources and Community Development to perform the following functions:

(1) To request the North Carolina Congressional Delegation to apply to the Congress of the United States whenever deemed necessary for appropriations for protecting and improving any harbor or waterway in the State and for accomplishing needed flood control, shore-erosion prevention, and water-resources development for water supply, water quality control, and other purposes.

(2) To initiate, plan, and execute a long-range program for the preservation, development and improvement of rivers, harbors, and inland ports, and to promote the public interest therein.

(3) To prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the preservation and improvement of rivers, harbors, dredging of small inlets, provision for safe harbor facilities, and public tidewaters of the State.

(4) To make engineering studies, hydraulic computations, hydrographic surveys, and reports regarding shore-erosion projects, dams, reservoirs, and river-channel improvements; to develop, for budget and planning purposes, estimates of the costs of proposed new projects; to prepare bidding documents, plans, and specifications for harbor, coastal, and river projects, and to inspect materials, workmanship, and practices of contractors to assure compliance with plans and specifications.

(5) To cooperate with the United States Army Corps of Engineers in causing to be removed any wrecked, sunken or abandoned vessel or unauthorized obstructions and encroachments in public harbors, channels, waterways, and tidewaters of the State.

(6) To cooperate with the United States Coast Guard in marking out and establishing harbor lines and in placing buoys and structures for marking navigable channels.

(7) To cooperate with federal and interstate agencies in planning and developing water-resource projects for navigation, flood control, hurricane protection, shore-erosion prevention, and other purposes.

(8) To provide professional advice to public and private agencies, and to citizens of the State, on matters relating to tidewater development, river works, and watershed development.

(9) To discuss, with federal, State, and municipal officials and other interested persons, a program of development of rivers, harbors, and related resources.

(10) To make investigations and render reports requested by the Governor and the General Assembly.

(11) To participate in activity of the National Rivers and Harbors Congress, the American Shore and Beach Preservation Association, the American Watershed Council, the American Water Works Association, the American Society of Civil Engineers, the Council of State governments, the Conservation Foundation, and other national agencies concerned with conservation and development of water resources.

(12) To prepare and maintain climatological and water-resources records and files as a source of information easily accessible to the citizens of the State and to the public generally.

(13) To formulate and administer a program of dune rebuilding, hurricane protection, and shore-erosion prevention.

(14) To include in the biennial budget the cost of performing the additional functions indicated above.

(15) To initiate, plan, study, and execute a long-range floodplain management program for the promotion of health, safety, and welfare of the public. In carrying out the purposes of this subsection, the primary responsibility of floodplain management rests with the local levels of government and it is, therefore, the policy of this State and of this Department to provide guidance, coordination, and other means of assistance, along with the other agencies of this State and with the local levels of government, to effectuate adequate floodplain management programs.

This Department is directed to pursue an active educational program of floodplain management measures, to include in each biennial report a statement of flood damages, location where floodplain management is desirable, and suggested legislation, if deemed desirable, and within its capacities to provide advice and assistance to State agencies and local levels of government.

(c) Repealed by Session Laws 1961, c. 315.

(d) Investigation of Coasts, Ports and Waterways of State. — The Department of Natural Resources and Community Development is designated as the official State agency to investigate and cause investigations to be made of the coasts, ports and waterways of North Carolina and to cooperate with agencies of the federal and State government and other political subdivisions in making such investigations. Provided, however, that the provisions of this section shall not be construed as in any way interfering with the powers and duties of the Utilities Commission, relating to the acquiring of rights-of-way for the Intra-Coastal Waterway; or to authorize the Department of Natural Resources and Community Development to represent the State in connection with such duties.

(e) Registration with Department of Natural Resources and Community Development Required; Registration Periods. — Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner with the use of power machinery in this State, shall register annually with the North Carolina Department of Natural Resources and Community Development on forms to be furnished by the said Department. The registration required hereby shall be made during the period from January 1 to January 31 of each year.

(f) Samples of Cuttings to Be Furnished the Department of Natural Resources and Community Development When Requested. — Every person, firm or corporation engaged in the business of drilling, boring, coring or constructing wells in any manner by the use of power machinery shall furnish the Department of Natural Resources and Community Development samples of cuttings from such depths as the Department may require from all wells constructed by such person, firm or corporation, when such samples are requested by the Department. The Department shall bear the expense of delivering such samples. The Department shall, after an analysis of the samples submitted, furnish a copy of such analysis to the owner of the property on which the well was constructed; the Department shall not report the results of any such analysis to any other person whatsoever until the person legally authorized to do so authorizes in writing the release of the results of the analysis.

(g) Reports of Each Well Required. — Every person, firm or corporation engaged in the business of drilling, boring, coring, or constructing wells with power machinery within the State of North Carolina shall, within 30 days of the completion of each well, report to the Department of Natural Resources and Community Development on forms furnished by the Department the location, size, depth, number of feet of casing used, method of finishing, and formation log information of each such well. In addition such person, firm or corporation shall report any tests made of each such well including the method of testing, length of test, draw-down in feet and yield in gallons per minute. The person, firm or corporation making such report to the Department of Natural Resources and Community Development shall at the time such report is made also furnish a copy thereof to the owner of the property on which the well was constructed.

(h) Drilling for Petroleum and Minerals Excepted. — The provisions of this Article shall not apply to drillings for petroleum and minerals.

(i) Penalty for Violation. — Any person violating the provisions of subsections (e), (f) and (g) of G.S. 143-355 shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of fifty dollars ($50.00). Each violation shall constitute a separate offense.

(j) Miscellaneous Duties. — There are also transferred to the Department of Water Resources the duties of the Board of Conservation and Development, as set forth in G.S. 113-8, to make investigations of water supplies and water powers, prepare and maintain a general inventory of the water resources of the State and take such measures as it may consider necessary to promote their development; and to supervise, guide, and control the performance of the duties set forth in subsection (b) of this section and to hold hearings with regard thereto. In connection with administration of the well-drilling law the Department of Conservation and Development shall, if requested by the Department of Water Resources, prepare analyses of well cuttings for mineral and petroleum content.

(k) Water Use Information. — Any person using, withdrawing, diverting or obtaining water from surface streams, lakes and underground water sources shall, upon the request of the Department, file a monthly report with the Department of Natural Resources and Community Development showing the amount of water used, withdrawn, diverted or obtained from such sources. Such report shall be on a form supplied by the Department and shall show the identification of the water well or other withdrawal facility, location, withdrawal rate (measured in gallons per minute), and total gallons withdrawn during the month. Reports required to be filed under this subsection shall be filed on or before the fifteenth day of the month succeeding the month during which the using, withdrawing, diverting or obtaining water required to be reported occurred. Provided, however, this provision does not include use for household, livestock, or gardens. All reports required under this subsection are provided solely for the purpose of the Department of Natural Resources and Community Development. (1959, c. 779, s. 3; 1961, c. 315; 1967, c. 1069, ss. 1-3; c. 1070, s. 1; c. 1071, ss. 3, 4; c. 1117, s. 1; 1973, c. 1262, ss. 23, 28, 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory language of subsection (b) and in two places in each of subsections (d), (e), (f), (g), and (k).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Because subsections (a) and (j) pertain to past events, they have not been changed pursuant to the 1973 amendatory act.

The reference to § 113-8 in subsection (j) is to that section as it existed prior to its 1973 amendment.

§ 143-356. Continuation of Stream Sanitation Committee, Division of Water Pollution Control and Director of Division within Department of Water Resources. — (a) The State Stream Sanitation Committee as provided for by Article 21, Chapter 143 as amended is hereby transferred to and continued within the State Department of Water Resources without change in its powers, duties, responsibilities and functions.

(b) The Division of Water Pollution Control of the State Board of Health and the office of Director of such Division as provided for in G. S. 143-214 are hereby transferred to and continued within the Department of Water Resources as the Division of Water Pollution Control of the Department of Water Resources. The Board of Water Resources may transfer additional functions to the said Division and Director and may revise their titles appropriately to reflect any such transfer of functions.

(c) The Department of Water Resources as Administrative Agent of State Stream Sanitation Committee. — The Department of Water Resources through its Division of Water Pollution Control, shall be the administrative agent of the State Stream Sanitation Committee, and subject to the general policies of the Committee, shall make such inspections, conduct such investigations, and do such other things as may be necessary to carry out the provisions of Article 21 of Chapter 143 of the General Statutes. The Attorney General shall act as attorney for the Committee, and shall initiate actions in the name of, and at the request of, the Committee.

(d) Division of Water Pollution Control. — The Division of Water Pollution Control shall be responsible for administering the provisions of Article 21 of Chapter 143 and shall be responsible for performing such other duties relating to the control of municipal, institutional, and industrial sewerage and waste collection and disposal systems as may be assigned to it by the Board of Water Resources. The Director of such Division shall be selected by the Board of Water Resources from nominees acceptable to both the Board and the Committee. He shall be a well qualified sanitary engineer, fully trained and experienced in the field of waste disposal. He shall:

(1) Serve as administrative officer and secretary of the Committee and shall attend all meetings of the Committee, without voting power, and shall keep an accurate and complete record of all meetings, hearings, correspondence, laboratory studies, and technical work, and shall make these records available for public inspection at all reasonable times;

(2) Review and approve plans, specifications and other such documents as may be required in connection with applications filed for certificates of approval, permits, or other documents of approval under the provisions of this Article; and

(3) Perform such other related duties as the Committee or Board of Water Resources may from time to time direct. (1959, c. 779, s. 4.)

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 143-357. Transfer of property, records, and appropriations. — (a) In connection with the transfers made by G.S. 143-354, 143-355 and 143-356 all records, property, supplies, equipment, personnel, funds, credits, appropriations, quarterly allotments and executory contracts of the State Board of Water Commissioners, the State Stream Sanitation Committee, the Division of Water Pollution Control of the State Board of Health and of the affected divisions of the Department of Conservation and Development are hereby transferred to the Department of Water Resources, effective July 1, 1959. In the case of the Division of Water Pollution Control the records transferred shall include, among other things, all plans and specifications upon the basis of which documents of approval have been issued under the authority of Article 21 of this Chapter. The transfers directed by this subsection shall be made under the supervision of the Governor, and he shall be the final arbiter of all differences and disputes arising incident to such transfers.

(b) Insofar as practical the expenses necessary to carry out the provisions of this Article shall, during the 1959-1961 biennium, be provided out of appropriations made to the presently existing agencies whose functions are to be transferred to the Department of Water Resources; and in the event additional funds are necessary to carry out the provisions of this Article, the Governor, with the approval of the Council of State, is hereby authorized to appropriate such additional funds from the Contingency and Emergency Fund.

(c) No transfer of functions to the Department of Water Resources provided for in this Article shall affect any action, suit, proceeding, prosecution, contract, lease or other transaction involving such a function which was initiated, undertaken or entered into prior to or pending the time of the transfer, but (except in the case of the Stream Sanitation Committee) the Department shall be substituted for the agency from which the function was transferred and so far as practicable the procedure provided for in this Article shall be employed in completing or disposing of the matter. (1959, c. 779, s. 5.)

Editor's Note. — Session Laws 1973, c. 1262, s. 23(b)(60) provides: "Notwithstanding the conforming changes in the Executive Organization Act of 1973, G.S. 143-357(a) will remain as worded on the date of ratification of the Executive Organization Act of 1973."

Because subsections (b) and (c) of this section relate to past events, no changes have been made in those subsections pursuant to Session Laws 1973, c. 1262, which reorganized the Department of Natural and Economic Resources.

§ 143-358. Cooperation of State officials and agencies. — All State agencies and officials shall cooperate with and assist the State Environmental Management Commission in enforcing and carrying out the provisions of this Article and the rules, regulations and policies adopted by the Environmental Management Commission pursuant thereto. (1959, c. 779, s. 6; 1973, c. 1262, s. 23.)

§ 143-359. Biennial reports of Environmental Management Commission. — The Environmental Management Commission shall file with the Governor and the General Assembly a biennial report summarizing the activities of the Department for the preceding two years and recommending changes deemed necessary in laws, policies and administrative organization for a more beneficial use of the State's water resources. (1959, c. 779, s. 7; 1973, c. 1262, s. 23.)

ARTICLE 39.

U.S.S. North Carolina Battleship Commission.

§§ 143-360 to 143-362: Repealed by Session Laws 1977, c. 741, s. 5.

Cross References. — For present provisions as to the U.S.S. North Carolina Battleship Commission, see §§ 143B-73 through 143B-74.3.

As to transfer of functions, etc., to Department of Cultural Resources, see § 143B-51.

§§ 143-363 to 143-365: Repealed by Session Laws 1973, c. 476, s. 59.

§ 143-366: Recodified as § 143B-73.1 by Session Laws 1977, c. 741, s. 8.

§§ 143-367 to 143-369: Recodified as §§ 143B-74.1 to 143B-74.3 by Session Laws 1977, c. 741, s. 8.

ARTICLE 39A.

Frying Pan Lightship Marine Museum Commission.

§§ 143-369.1 to 143-369.3: Repealed by Session Laws 1973, c. 476, s. 116.

Cross Reference. — As to transfer of functions of the Commission to the Department of Cultural Resources, see § 143B-51.

ARTICLE 40.

Advisory Commission for State Museum of Natural History.

§ 143-370. Commission created; membership. — There is hereby created an Advisory Commission for the Museum of Natural History which shall determine its own organization. It shall consist of at least nine members, which shall include the Director of the Museum of Natural History, the Commissioner of Agriculture, the State Geologist and Secretary of the Department of Natural Resources and Community Development, the Director of the Institute of Fisheries Research of the University of North Carolina, the Director of the Wildlife Resources Commission, the Superintendent of Public Instruction, or qualified representative of any or all of the above-named members, and at least three persons representing the East, the Piedmont, the Western areas of the State. Members appointed by the Governor shall serve for terms of two years with the first appointments to be made effective September 1, 1961. Any member may be removed by the Governor for cause. (1961, c. 1180, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

State Government Reorganization. — The Museum of Natural History Advisory Commission was transferred to the Department of Agriculture by § 143A-66, enacted by Session Laws 1971, c. 864.

§ 143-371. Duties of Commission; meetings, formulation of policies and recommendations to Governor and General Assembly. — It shall be the duty of the Advisory Commission for the Museum of Natural History to meet at least twice each year, to formulate policies for the advancement of the said Museum, to make recommendations to the Governor and to the General Assembly concerning the Museum, and to assist in promoting and developing wider and more effective use of the Museum of Natural History as an educational, scientific and historical exhibit. (1961, c. 1180, s. 2.)

§ 143-372. No compensation of members; reimbursement for expenses. — Members of the Advisory Commission shall serve without compensation and shall be reimbursed for actual expenses incurred while in attendance at meetings of the Commission at the same rate as that established for reimbursement of State employees. Payment for such reimbursement for actual expense shall be made from the Contingency and Emergency Fund. (1961, c. 1180, s. 3.)

§ 143-373. Reports to General Assembly. — The Commission shall prepare and submit to the 1963 General Assembly, and to each succeeding General Assembly, a report outlining the needs of the State Museum of Natural History, and their recommendation for improvement of the effectiveness of the said State Museum of Natural History for the purpose hereinabove set forth. (1961, c. 1180, s. 4.)

ARTICLE 41.

Science and Technology Research Center.

§§ 143-374 to 143-377: Recodified as §§ 143B-442 to 143B-445 by Session Laws 1977, c. 198, s. 26.

ARTICLE 42.

Board of Science and Technology.

§§ 143-378 to 143-383: Repealed by Session Laws 1973, c. 1262, s. 79.

Cross Reference. — As to the Science and Technology Committee, see §§ 143B-440, 143B-441.

ARTICLE 43.

North Carolina Seashore Commission.

§§ 143-384 to 143-391: Repealed by Session Laws 1969, c. 1143, s. 1.

ARTICLE 44.

North Carolina Traffic Safety Authority.

§ 143-392. Authority created; members. — There is hereby created the North Carolina Traffic Safety Authority, hereinafter called the Authority, which shall be composed of the following officials: the Commissioners of Agriculture, Insurance, Labor, and Motor Vehicles, the chairman of the Board of Transportation, the Superintendent of Public Instruction, the Secretary of Human Resources, the Attorney General, the chairman of the Industrial and Utilities Commissions, the President of the North Carolina Traffic Safety Council, Inc., and one member each from the Senate and House of Representatives to be appointed by the presiding officers thereof. The chairman of the Authority shall be the Secretary of Transportation. (1965, c. 541, s. 1; 1973, c. 476, s. 128; c. 507, s. 5; 1975, c. 716, s. 6.)

Cross Reference. — As to transfer of the North Carolina Traffic Safety Authority to the Department of Transportation, see § 143B-356.

Editor's Note. — The 1975 amendment deleted "the Governor, who shall be Chairman," immediately following the colon near the beginning of the first sentence, and added the second sentence.

State Government Reorganization. — The Traffic Safety Authority was transferred to the Department of Transportation and Highway Safety (now Department of Transportation) by former § 143A-102, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1975, c. 716, s. 5. For present provisions as to the Department of Transportation, see § 143B-345 et seq.

§ 143-393. Duties. — It shall be the duty of the Authority to undertake a thorough and objective analysis of the State's traffic problem, make an inventory and appraisal of what is currently being done by each official agency, survey available resources and facilities, and determine what additional programs need to be instituted or what existing programs need to be improved. On the basis of its studies, a written statement of agreed upon needs shall be developed and priorities established. Said written statement of needs shall be periodically updated and submitted to the chairman as deemed advisable but at least once each year in the month of January. (1965, c. 541, s. 2.)

§ 143-394. Meetings. — The Authority shall meet at the call of the chairman but not less than once every three months. (1965, c. 541, s. 3.)

§ 143-395. Authority not to exercise powers or duties of other departments or agencies. — The Authority shall exercise no powers or duties now vested in any other department or agency of State government except as provided in this Article. (1965, c. 541, s. 4.)

ARTICLE 45.

North Carolina American Revolution Bicentennial Commission.

§§ 143-396 to 143-399: Repealed by Session Laws 1973, c. 476, s. 70.

Cross Reference. — For present provisions as to the American Revolution Bicentennial Committee, see §§ 143B-81, 143B-82.

ARTICLE 46.

Governor's Committee on Law and Order.

§§ 143-400 to 143-402.2: Repealed by Session Laws 1969, c. 1145, s. 4.

Cross Reference. — As to transfer of functions, property, etc., of the Governor's Committee on Law and Order to the Department of Local Affairs, see § 143-326.

Editor's Note. — Former §§ 143-400 to 143-402, relating to the Governor's Committee on Law and Order, were added by Session Laws 1967, c. 65, and amended by Session Laws 1969, c. 57. Former §§ 143-402.1 and 143-402.2, relating to the executive director, staff and consultants of the Committee, were added by Session Laws 1969, c. 57.

ARTICLE 47.

Promotion of Arts.

§ 143-403. "Arts" defined. — The term "arts" includes, but is not limited to: music, dance, drama, creative writing, architecture and allied fields, painting, sculpture, photography, crafts, television, radio, and the execution and exhibition of such major art forms. (1967, c. 164, s. 1; 1973, c. 476, s. 79.)

Cross Reference. — As to the North Carolina Arts Council, see §§ 143B-87, 143B-88.

§§ 143-404, 143-405: Repealed by Session Laws 1973, c. 476, s. 79.

§ 143-406. Duties of Department of Cultural Resources. — The Department of Cultural Resources shall take action to carry out the following purposes as funds and staff permit:

(1) Study, collect, maintain, and otherwise disseminate factual data and pertinent information relative to the arts;
(2) Assist local organizations and the community at large with needs, resources and opportunities in the arts;
(3) Serve as an agency through which various public and nonpublic organizations concerned with the arts can exchange information, coordinate programs and stimulate joint endeavors;
(4) Identify research needs, encourage research and assist in obtaining funds for research;
(5) Assist in bringing the highest obtainable quality in the arts to the State; promote the maximum opportunity for the people to experience, enjoy, and profit from those arts.

The Department of Cultural Resources shall, in addition to such other recommendations, studies and plans as it may submit from time to time, submit a biennial report of progress to the Governor, and thus, to the General Assembly. (1967, c. 164, s. 4; 1973, c. 476, s. 79.)

§ 143-407. Appropriation; funds. — In addition to the appropriations out of the general fund of the State, the Department may accept gifts, bequests, devises, matching funds, or other considerations for use in promoting the arts. (1967, c. 164, s. 5; 1973, c. 476, s. 79.)

§ 143-408: Repealed by Session Laws 1973, c. 476, s. 79.

ARTICLE 48.

Executive Mansion.

§ 143-409: Repealed by Session Laws 1973, c. 476, s. 67.

§ 143-410. Purpose. — The purpose of the Department of Cultural Resources shall be:

(1) To preserve and maintain the Executive Mansion, located at 200 North Blount Street, Raleigh, North Carolina, as a structure having historical significance and value to the State of North Carolina;
(2) To improve the furnishing of the Executive Mansion by encouraging gifts and objects of art, furniture and articles which may have historical value, and to approve major changes in the furnishings of the Mansion;
(3) To recommend to the Department of Administration any major renovations to the Executive Mansion which the Department of Cultural Resources deems necessary to preserve and maintain the structure;
(4) To keep a complete list of all gifts and articles received, together with their history and value; and
(5) To publicize work of the Executive Mansion Fine Arts Committee.

(1967, c. 273, s. 2; 1973, c. 476, s. 67.)

Cross Reference. — As to the Executive Mansion Fine Arts Committee, see §§ 143B-79, 143B-80.

§ 143-411. Powers of Department of Cultural Resources. — The Department of Cultural Resources is hereby empowered on behalf of the State of North Carolina to receive gifts, contributions of money and objects of art consistent with the purpose for which the Department is created. Title to all gifts, articles and moneys received by the Department shall be vested in the State of North Carolina and shall remain in the custody and control of the Department. The Department is authorized to accept loans of furniture and other objects as, in its discretion, it deems suitable. The Department is empowered to employ clerical assistance on such basis as it may deem reasonable. Provided, however, that the salary of such person shall be paid out of funds the Department has received in the conduct of its work, and it is specifically provided that no other funds belonging to the State of North Carolina shall be used for this purpose. (1967, c. 273, s. 3; 1973, c. 476, s. 67.)

§§ 143-412 to 143-414: Repealed by Session Laws 1973, c. 476, s. 67.

§ 143-415. Authority, etc., of Department of Administration not affected. —This Article shall not be construed as divesting the Department of Administration of any powers, duties and authority relating to the budget or the operation and maintenance of the Executive Mansion. (1967, c. 273, s. 7.)

ARTICLE 49.

North Carolina Human Relations Commission.

§§ 143-416 to 143-422: Repealed by Session Laws 1975, c. 879, s. 36.

Cross Reference. — For present provisions as to the North Carolina Human Relations Council, see §§ 143B-391, 143B-392.

ARTICLE 49A.

Equal Employment Practices.

§ 143-422.1. Short title. — This Article shall be known and may be cited as the Equal Employment Practices Act. (1977, c. 726, s. 1.)

§ 143-422.2. Legislative declaration. — It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.

It is recognized that the practice of denying employment opportunity and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general. (1977, c. 726, s. 1.)

§ 143-422.3. Investigations; conciliations. — The Human Relations Council in the Department of Administration shall have the authority to receive charges of discrimination from the Equal Employment Opportunity Commission pursuant to an agreement under Section 709(b) of Public Law 88-352, as amended by Public Law 92-261, and investigate and conciliate charges of discrimination. Throughout this process, the agency shall use its good offices to effect an amicable resolution of the charges of discrimination. (1977, c. 726, s. 1.)

ARTICLE 50.

Commission on the Status of Women.

§§ 143-423 to 143-428: Repealed by Session Laws 1975, c. 879, s. 39.

Cross Reference. — For present provisions as to the Council on the Status of Women, see §§ 143B-393, 143B-394.

ARTICLE 51.

Tobacco Museums.

§§ 143-429, 143-430: Repealed by Session Laws 1973, c. 476, s. 116.

§ 143-431. Tobacco museums. — It shall be the duty of the Department of Cultural Resources to establish, supervise, manage and maintain the tobacco museums. The Department of Cultural Resources may establish a reasonable fee for viewing the museums which fees shall be used to defray the expenses of the museums. To accomplish these purposes, the Department of Cultural Resources shall have authority to buy and sell real and personal property and to accept donations of real or personal property from any source. The Department of Cultural Resources shall not contract any debt in its purchase of real or personal property. (1969, c. 840, s. 3; 1973, c. 476, s. 116.)

§ 143-432. Location of museums. — One of the tobacco museums shall be located within Rockingham County at a site to be determined by the Department of Cultural Resources, and shall emphasize the history and development of tobacco manufacturing. One of the tobacco museums shall be located in Nash or Edgecombe Counties at a site to be determined by the Department of Cultural Resources and shall emphasize the history and development of growing and marketing of tobacco. (1969, c. 840, s. 4; 1973, c. 476, s. 116.)

ARTICLE 51A.

Tax Study Commission.

§ 143-433. Tax Study Commission created. — There is hereby created a commission to be known as the Tax Study Commission for the study of the revenue structure of the State, to be composed of 11 members and who shall be appointed biennially as follows: five members shall be appointed by the Governor, three members shall be appointed by the President of the Senate and three members shall be appointed by the Speaker of the House. The term of each member shall commence on July 1 of the year in which appointed, and each member shall serve until his successor is appointed and qualified. Any public officer appointed to the Commission shall serve ex officio in addition to his duties imposed by law. (1971, c. 1219, s. 1.)

§ 143-433.1. Duties of Commission. — It shall be the duty of the Commission to study and review the tax laws of the State, both State and local laws, and to recommend such changes as it may deem advisable in the rates of taxation, together with the predicted revenue effects thereof, and with proposed alternate sources of revenue, to the end that the revenue system may be as stable and equitable as possible, and yet so fair when compared with the tax structures of other states that business enterprises and persons will be encouraged to locate and expand business in North Carolina. (1971, c. 1219, s. 1.)

§ 143-433.2. Organization of Commission. — Upon its appointment, the Commission shall organize by electing from its membership a chairman and a vice-chairman. The Secretary of Revenue shall serve as secretary to the

Commission, but shall not be a member. The Commission is authorized, with the approval of the Governor, to employ such clerical and other assistance, professional advice and services as may be deemed necessary in the performance of its duties. (1971, c. 1219, s. 1; 1973, c. 476, s. 193.)

§ 143-433.3. Members to serve without compensation; subsistence and travel expenses. — Members of the Commission shall serve without compensation but they shall be paid such per diem and travel expenses as are provided for members of State boards and commissions generally. The expenses of the Commission shall be paid from the Contingency and Emergency Fund, but the total of such expenses of the Commission shall not exceed the sum of fifty thousand dollars ($50,000) per year. (1971, c. 1219, s. 1.)

§ 143-433.4. Assistance to the Commission. — The Secretary of Revenue shall make themselves and their staffs [himself and his staff] available to the Commission, and the tax supervisors of the various counties shall render any assistance and service requested by the Commission. (1971, c. 1219, s. 1; 1973, c. 476, s. 193.)

§ 143-433.5. Reports to Governor and General Assembly. — The Commission shall submit its report by September 1, 1974, and biennially thereafter, to the Governor for transmittal to the Advisory Budget Commission and to the next succeeding General Assembly. (1971, c. 1219, s. 1.)

ARTICLE 52.

Pesticide Board.

Part 1. Pesticide Control Program: Organization and Functions.

§ 143-434. Short title. — This Article may be cited as the North Carolina Pesticide Law of 1971. (1971, c. 832, s. 1.)

Editor's Note. — Session Laws 1971, c. 832, ss. 5 to 7, provide:

"Sec. 5. This act shall not be deemed to repeal the Structural Pest Control Act of North Carolina of 1955, as amended (Chapter 106, Article 4C).

"Sec. 6. No provision of this act is intended, nor shall be construed, to affect in any way any rights or interests (whether public or private):

"(a) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act;

"(b) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken (including the adoption of ordinances or resolutions) pursuant to or within the scope of any provision of law so repealed.

"Sec. 7. (a) Notwithstanding any other provision of law, all existing rules and regulations concerning pesticides of the North Carolina Department of Agriculture and of any other department or agency of the State of North Carolina, not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, modified or amended.

"(b) No action or proceeding of any nature concerning pesticides (whether civil or criminal, judicial or administrative or otherwise) pending at the effective date of this act by or against or before the North Carolina Department of Agriculture or any other department or agency of the State of North Carolina shall be abated or otherwise affected by the adoption of this act."

For a note on control of pesticides, see 49 N.C.L. Rev. 529 (1971).

§ 143-435. Preamble. — (a) The Legislative Research Commission was directed by House Resolution 1392 of the 1969 General Assembly "to study agricultural and other pesticides," and to report its findings and recommendations to the 1971 General Assembly. Pursuant to said Resolution a report was prepared and adopted by the Legislative Research Commission in

1970 concerning pesticides. In this report the Legislative Research Commission made the following findings concerning the use and effects of pesticides and the need for legislation concerning control of pesticide use, of which the General Assembly hereby takes cognizance:

(1) The use of chemical pesticides has developed since the 1940's into a major, new billion-dollar industry. Pesticides have bettered the lot of mankind in many ways and especially have assisted the farmer by their contribution to a stable and inexpensive supply of high quality food, fiber and forest products. The control of insects, fungi and other pests is essential to the public health and welfare and specifically to the prevention of disease, to the production and preservation of food, fiber, and forests and to the protection of other aspects of modern civilization.

(2) The use of pesticides for these important purposes is currently a matter of serious public concern and their use in some instances presents risks to man and the environment which must be weighed against the benefits of those uses in the overall public interest. Evidence is accumulating that extensive use of persistent pesticides poses hazards to health and the environment. Environmental problems resulting from the use, overuse and misapplication of some chemicals, and the disposal of unused chemicals and containers, have grown to the point where contamination of the environment is approaching significant proportions. There is concern among scientists and public health personnel about the long-term chronic effects of pesticide pollution on human health. Contamination by DDT has been shown to be global in extent. Moreover, recent experience in North Carolina and elsewhere has shown that the more toxic but less persistent pesticides cannot safely be substituted for the persistent "hard" pesticides without stringent safeguards.

(3) More extensive observation, study and monitoring of the effectiveness and the use of pesticides and of undesirable side effects on man and on the environment and of their relative importance for the overall public health and welfare are desirable in the public interest.

(4) Continued and strengthened control of the quality of pesticides and the control of labeling claims, direction for use and warnings are necessary for the protection of the purchasing public, including the household consumer, the farmer and other users.

(5) No existing legislation in North Carolina effectively limits or controls the use of pesticides. Misuse and misapplication of pesticides, while effectively controlled by law with respect to structural pest control operators, is not adequately controlled with respect to some other major groups of pesticide applicators. Careless disposal of unused pesticides and contaminated containers is not controlled by law, and no North Carolina legislation requires that pesticide dealers, who are the principal source of advice for many pesticide users, be qualified to give advice or be held responsible for their advice. These gaps in legal control of pesticides are important and should be remedied.

(b) The purpose of this Article is to regulate in the public interest the use, application, sale, disposal and registration of insecticides, fungicides, herbicides, defoliants, desiccants, plant growth regulators, nematicides, rodenticides, and any other pesticides designated by the North Carolina Pesticide Board. New pesticides are continually being discovered or synthesized which are valuable for the control of insects, fungi, weeds, nematodes, rodents, and for use as defoliants, desiccants, plant regulators and related purposes. However, such pesticides may be ineffective or may seriously injure health, property, or wildlife if not properly used. Pesticides may injure man or animals, either by direct poisoning or by gradual accumulation of poisons in the tissues. Crops or other plants may also be injured by their improper use. The drifting or washing of pesticides into streams or lakes can cause appreciable danger to aquatic life. A pesticide applied for the purpose of killing pests in a crop, which is not itself injured by the pesticide, may drift and injure other crops or nontarget organisms with which it comes in contact. In furtherance of the findings and recommendations of the Legislative Research Commission, it is hereby declared to be the policy of the State of North Carolina that for the protection of the health, safety, and welfare of the people of this State, and for the promotion of a more secure, healthy and safe environment for all the people of the State, the future sale, use and application of pesticides shall be regulated, supervised and controlled by the State in the manner herein provided. (1971, c. 832, s. 1.)

§ 143-436. North Carolina Pesticide Board; creation and organization. —(a) There is hereby established the North Carolina Pesticide Board which, together with the Commissioner of Agriculture, shall be responsible for carrying out the provisions of this Article.

(b) The Pesticide Board shall consist of seven members, to be appointed by the Governor, as follows:

(1) One member each representing the North Carolina Department of Agriculture, the North Carolina Department of Human Resources, and a State conservation agency. The persons so selected may be either members of a policy board or departmental officials or employees.
(2) A representative of the agricultural chemical industry.
(3) A person directly engaged in agricultural production.
(4) Two at-large members, from fields of endeavor other than those enumerated in subdivisions (2) and (3) of this subsection, one of whom shall be a nongovernmental conservationist.

(c) The members of the Pesticide Board shall serve staggered four-year terms. Of the persons originally appointed, the members representing State agencies shall serve two-year terms, and the four at-large members shall serve four-year terms. All members shall hold their offices until their successors are appointed and qualified. Any vacancy occurring in the membership of the Board prior to the expiration of the term shall be filled by appointment by the Governor for the remainder of the unexpired term. The Governor may at any time remove any member from the Board for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. Each appointment to fill a vacancy in the membership of the Board shall be of a person having the same credentials as his predecessor.

(d) The Board shall select its chairman from its own membership, to serve for a term of two years. The chairman shall have a full vote. Any vacancy occurring in the chairmanship shall be filled by the Board for the remainder of the term. The Board may select such other officers as it deems necessary.

(e) Any action of the Board shall require at least four concurring votes.

(f) The members of the Board who are not officers or employees of the State shall receive for their services the per diem and compensation prescribed in G.S. 138-5. (1971, c. 832, s. 1; 1973, c. 476, s. 128.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 128, "Department of Human Resources" has been substituted for "Department of Health" in this section.

§ 143-437. Pesticide Board; functions. — The Pesticide Board shall be the governing board for the programs of pesticide management and control set forth in this Article. The Pesticide Board shall have the following powers and duties under this Article:

(1) To adopt rules and regulations and make policies for the programs set forth in this Article.

(2) To carry out a program of planning and of investigation into long-range needs and problems concerning pesticides.

(3) To collect, analyze and disseminate information necessary for the effective operation of the programs set forth in this Article.

(4) To provide professional advice to public and private agencies and citizens of the State on matters relating to pesticides, in cooperation with other State agencies, with professional groups, and with North Carolina State University and other educational institutions.

(5) To accept gifts, devises and bequests, and with the approval of the Governor to apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association or individual, and may comply with the terms, conditions and limitations of the grant, in order to accomplish any of the purposes of the Board, such grant funds to be expended pursuant to the Executive Budget Act.

(6) To inform and advise the Governor on matters involving pesticides, and to prepare and recommend to the Governor and the General Assembly any legislation which may be deemed proper for the management and control of pesticides in North Carolina.

(7) To make annual reports to the Governor and to make such other investigations and reports as may be requested by the Governor or the General Assembly.

(8) To exempt any federal or State agency from any provision of this Article if it is determined by the Board that emergency conditions exist which require exemption. (1971, c. 832, s. 1; 1977, c. 199.)

Editor's Note. — The 1977 amendment added subdivision (8).

§ 143-438. Commissioner of Agriculture to administer and enforce Article. — The Commissioner of Agriculture shall have the following powers and duties under this Article:

(1) To administer and enforce the provisions of this Article.

(2) To attend all meetings of the Pesticide Board, but without power to vote (unless he be designated as the ex officio member of the Board from the Department of Agriculture).

(3) To keep an accurate and complete record of all Board meetings and hearings, and to have legal custody of all books, papers, documents and other records of the Board.

(4) To assign and reassign the administrative and enforcement duties and functions assigned to him in this Article to one or more of the divisions and other units within the Department of Agriculture.

(5) To direct the work of the personnel employed by the Board and of the personnel of the Department of Agriculture who have responsibilities concerning the programs set forth in this Article.

(6) To delegate to any division head or other officer or employee of the Department of Agriculture any of the powers and duties given to the Department by statute or by the rules, regulations and procedures established pursuant to this Article.

(7) To perform such other duties as the Board may from time to time direct. (1971, c. 832, s. 1.)

§ 143-439. Pesticide Advisory Committee; creation and functions. — (a) There is hereby authorized the establishment of the Pesticide Advisory Committee, which shall assist the Board and the Commissioner in an advisory capacity on matters which may be submitted to it by the Board or the

Commissioner, including technical questions and the development of rules and regulations.

(b) The Pesticide Advisory Committee shall consist of 17 members to be appointed by the Board, as follows: three practicing farmers; one conservationist (at large); one ecologist (at large); one representative of the pesticide industry; one representative of agribusiness (at large); one local health director; three members of the North Carolina State University School of Agriculture and Life Sciences, at least one of which shall be from the area of wildlife and/or biology; one member each representing the North Carolina Department of Agriculture, the North Carolina Department of Human Resources and a State conservation agency; one representative of a public utility or railroad company which uses pesticides, or of the Board of Transportation; one member of the North Carolina Agricultural Aviation Association; and one member of the general public (at large).

(c) Members of the Pesticide Advisory Committee shall serve at the pleasure of the Board. The members who are not officers or employees of the State shall receive regular State subsistence and travel expenses. (1971, c. 832, s. 1; 1973, c. 476, s. 128; c. 507, s. 5; 1975, c. 824.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 128, "Department of Human Resources" has been substituted for "Department of Health" in subsection (b).

The 1975 amendment substituted "17 members" for "15 members" near the beginning of subsection (b) and added the language beginning "one member of the North Carolina Agricultural Aviation Association" at the end of that subsection.

Part 2. Regulation of the Use of Pesticides.

§ 143-440. Restricted-use pesticides regulated. — (a) The Board may, by regulation after a public hearing, adopt and from time to time revise a list of restricted-use pesticides for the State or for designated areas within the State. The Board may designate any pesticide or device as a "restricted-use pesticide" upon the grounds that, in the judgment of the Board (either because of its persistence, its toxicity, or otherwise) it is so hazardous or injurious to persons, pollinating insects, animals, crops, wildlife, lands, or the environment, other than the pests it is intended to prevent, destroy, control, or mitigate that additional restrictions on its sale, purpose, use or possession are required.

(b) The Board may include in any such restricted-use regulation the time and conditions of sale, distribution, or use of such restricted-use pesticides; may prohibit the use of any restricted-use pesticide for designated purposes or at designated places or times; may require the purchaser or user to certify that restricted-use pesticides will be used only as labeled or as further restricted by regulations; and may, if it deems it necessary to carry out the provisions of this Part, require that any or all restricted-use pesticides shall be purchased, possessed, or used only under permit of the Board and under its direct supervision in certain areas and/or under certain conditions or in certain quantities or concentrations except that any person licensed to sell such pesticides may purchase and possess such pesticides without a permit. The Board may require all persons issued such permits to maintain records as to the use of the restricted-use pesticides. The Board may authorize the use of restricted-use pesticides by persons licensed under the North Carolina Structural Pest Control Act without a permit. (1971, c. 832, s. 1.)

§ 143-441. Handling, storage and disposal of pesticides. — (a) The Board may adopt regulations:

(1) Concerning the handling, transport, storage (which may include security precautions), display or distribution of pesticides, and concerning the disposal of pesticides and pesticide containers.

(2) Restricting or prohibiting the use of certain types of containers or packages for specific pesticides. These restrictions may apply to type of construction, strength, and/or size to alleviate danger of spillage, breakage, or misuse.

(b) No person shall handle, transport, store, display, or distribute pesticides in such a manner as to endanger man and his environment or to endanger food, feed, or any other products that may be transported, stored, displayed, or distributed with pesticides, or in any manner contrary to the regulations of the Board.

(c) No person shall dispose of, discard, or store any pesticides or pesticide containers in such a manner as may cause injury to humans, vegetation, crops, livestock, wildlife, or to pollute any water supply or waterway, or in any manner contrary to the regulations of the Board. (1971, c. 832, s. 1.)

§ 143-442. Registration. — (a) Every pesticide prior to being distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the office of the Board, and such registration shall be renewed annually before January 1 for the ensuing calendar year. The applicant for registration shall file with the Board a statement including:

(1) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant;

(2) The name of the pesticide;

(3) A complete copy of the labeling accompanying the pesticide and a statement of all claims to be made for it including directions for use; and

(4) If requested by the Board a full description of the tests made and the results thereof upon which the claims are based. In the case of renewal of registration, a statement shall be required with respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(b) The applicant shall pay an annual registration fee of twenty-five dollars ($25.00) for each brand or grade of pesticide registered. An additional twenty-five dollars ($25.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article.

(c) The Board, when it deems necessary in the administration of this Article, may require the submission of the complete formula of any pesticide.

(d) If it appears to the Board that the composition of an article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of G.S. 143-443 the Board shall register the article. If it does not appear to the Board that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Part, it shall not register the article and in turn shall notify the applicant of the manner in which the article, labeling, or other material required to be submitted fail to comply. The Board, in accordance with the procedures specified herein, may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling complies with the provisions of this Part. Whenever an application for registration is refused or the Board proposes to suspend or cancel a registration, notice of such action shall be given to the applicant or registrant who shall have the right within 10 days of receipt of such notice to request a hearing on the action or proposed action of the Board, as provided in G.S. 143-464.

(e) The Board is authorized and empowered to refuse to register, or to cancel the registration of any or all brands and grades of pesticides as herein provided, if the registrant fails or refuses to comply with the provisions of this Part, or any rules and regulations promulgated thereunder, or, upon satisfactory proof that the registrant or applicant has been guilty of fraudulent and deceptive practices in the evasions or attempted evasions of the provisions of this Part, or any rules and regulations promulgated thereunder: Provided, that no registration shall be revoked or refused until the registrant or applicant shall have been given the opportunity for a hearing by the Board, as provided in G.S. 143-464.

(f) Notwithstanding any other provisions of this Part, registration is not required in the case of a pesticide shipped from one plant within this State to another plant within this State operated by the same person.

(g) Any pesticide declared to be discontinued by the registrant must be registered by the registrant for one full year after distribution is discontinued. Any pesticide in channels of distribution after the aforesaid registration period may be confiscated and disposed of by the Board, unless the pesticide is acceptable for registration and is continued to be registered by the manufacturer or the person offering the pesticide for wholesale or retail sale.

(h) A pesticide may be registered by the Board for experimental use, including use to control wild bird or animal populations where the birds or animals in question have not yet been declared unprotected by the Wildlife Resources Commission, notwithstanding the provisions of G.S. Chapter 113, Article 7. (1971, c. 832, s. 1; 1973, c. 389, ss. 1, 7; 1975, c. 425, ss. 1, 2.)

Editor's Note. — The 1975 amendment added "before January 1 for the ensuing calendar year" at the end of the first sentence of subsection (a) and added subsection (h).

§ 143-443. Miscellaneous prohibited acts. — (a) It shall be unlawful for any person to distribute, sell, or offer for sale within this State or deliver for transportation or transport in intrastate commerce or between points within this State through any point outside this State any of the following:

(1) Any pesticide which has not been registered pursuant to the provisions of G.S. 143-442, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with the registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration: Except that, in the discretion of the Board, a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

(2) Any pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing:

a. The name and address of the manufacturer, registrant, or person for whom manufactured;

b. The name, brand, or trademark under which said article is sold; and

c. The net weight or measure of the content subject, however, to such reasonable variations as the Board may permit.

(3) Any pesticide which contains any substance or substances in quantities highly toxic to man, determined as provided in G.S. 143-444, unless the label shall bear, in addition to any other matter required by this Part:

a. The skull and crossbones;

b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and

c. A statement of an antidote for the pesticide.

(4) The pesticides commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Part, or any other white or lightly colored pesticide which the Board, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored; unless it has been so colored or discolored, provided, that the Board may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the Board determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(5) Any pesticide which is adulterated or misbranded, (or any device which is misbranded).

(6) Any pesticide in containers violating regulations adopted pursuant to G.S. 143-441. Pesticides found in containers which are unsafe due to damage or defective construction may be seized and impounded.

(b) It shall be unlawful:

(1) For any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Part or regulations promulgated hereunder, or to add any substance to, or take any substance from a pesticide in a manner that may defeat the purpose of this Part;

(2) For any person to use for his own advantage or to reveal, other than to the Board or proper officials or employees of the State or federal government or to the courts of this State in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of G.S. 143-442.

(2a) For any person to use any registered pesticide in a manner inconsistent with its labeling. (1971, c. 832, s. 1; 1975, c. 425, s. 3.)

Editor's Note. — The 1975 amendment added subdivision (2a) in subsection (b).

§ 143-444. Determinations. — The Board is authorized:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

(2) To determine whether pesticides are highly toxic to man; and

(3) To determine standards of coloring or discoloring for pesticides, and to subject pesticides to the requirements of G.S. 143-443(a)(4). (1971, c. 832, s. 1.)

§ 143-445. Exemptions. — (a) The penalties provided for violations of G.S. 143-443(a) shall not apply to:

(1) Any carrier while lawfully engaged in transporting pesticides within this State, if such carrier shall, upon request, permit the Board or its designated agent to copy all records showing the transactions in and movement of the articles;

(2) Public officials of this State or local subdivisions thereof and the federal government engaged in the performance of their official duties;

(3) The manufacturer or shipper of a pesticide for experimental use only,
  a. By or under the supervision of an agency of this State or of the federal government authorized by law to conduct research in the field of pesticides, or
  b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only — Not to be sold," together with the manufacturer's name and address; (except that if a written permit has been obtained from the Board, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit).

(b) No article shall be deemed in violation of this Part when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this Part shall apply. (1971, c. 832, s. 1.)

§ 143-446. Samples; submissions. — (a) The Board, or its agent, is authorized and directed to sample, test, inspect and make analyses of pesticides sold or offered for sale or distributed within this State, at time and place and to such an extent as it may deem necessary to determine whether such pesticides are in compliance with the provisions of this Article. The Board is authorized to adopt regulations concerning the collection and examination of samples (or devices), and to adopt regulations establishing tolerances providing for reasonable deviations from the guaranteed analysis.

(b) The official analysis shall be made from the official sample. A sealed and identified sample, herein called "official check sample" shall be kept until the analysis is completed on the official sample, except that the registrant may obtain upon request a portion of said official sample. If the official analysis conforms with the provisions of this Part, the official check sample may be destroyed. If the official analysis does not conform with the provisions of this Part, then the official check sample shall be retained for a period of 90 days from the date of the certificate of analysis of the official sample.

(c) The Board, of its own motion or upon complaint, may cause an examination to be made for the purpose of determining whether any pesticide complies with the requirements of this Part. If it shall appear from such examination that a pesticide fails to comply with the provisions of this Part, the Board may cause notice to be given to the offending person in the manner provided in G.S. 143-464, and the proceedings thereupon shall be as provided in such section; provided that pesticides may be seized and confiscated as provided in G.S. 143-447.

(d) The Board shall, by publication in such manner as it may prescribe, give notice of all judgments entered in actions instituted under the authority of this Article. (1971, c. 832, s. 1.)

§ 143-447. Emergency suspensions; seizures. — (a) Notwithstanding any other provision of this Article, the Board may, when it finds that such action is necessary to prevent an imminent hazard to the public, or any other nontarget organism or segment of the environment, by order, suspend the registration of a pesticide immediately. In such case, it shall give the registrant prompt notice of such action and afford the registrant the opportunity for an expedited hearing. Final orders of the Board under this Part shall be subject to review as provided for in G.S. 143-464. Such review shall be instituted within 30 days after receipt by the applicant for registration or registrant of the Board's order. In no event shall registration of a pesticide be construed as a defense to any charge of an offense prohibited under this Article.

(b) It shall be the duty of the Board to issue and enforce a written or printed "stop sale, stop use, or removal" order to the owner or custodian of any lot of pesticide and for the owner or custodian to hold said lot at a designated place when the Board finds said pesticide is being offered or exposed for sale in violation of any of the provisions of this Article until the law has been complied with and said pesticide is released in writing by the Board or said violation has been otherwise legally disposed of by written authority. The Board shall release the pesticide so withdrawn when the requirements of the provisions of this Article have been complied with and upon payment of all costs and expenses incurred in connection with the withdrawal. The registrant of a pesticide found deficient in active ingredients shall be subject to a penalty for the deficiency. The deficiency penalty shall be three times the percentage deficiency times the retail value as established by the consignee at the time of sampling, but not less than twenty-five dollars ($25.00).

(c) Any pesticide (or device) that is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce between points within this State through any point outside this State shall be liable to be proceeded against in superior court in any county of the State where it may be found and seized for confiscation by process or libel for condemnation:

(1) In the case of a pesticide,
  a. If it is adulterated or misbranded,
  b. If it has not been registered under the provisions of G.S. 143-442,
  c. If it fails to bear on its label the information required by this Part,
  d. If it is a white or lightly colored pesticide and is not colored as required under this Part.
(2) In the case of a device, if it is misbranded.

(d) If the article is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article is sold, less legal costs, shall be paid to the State Treasurer; provided that the article shall not be sold contrary to the provisions of this Part; and provided further that upon payment of costs and execution and delivery of a good and sufficient bond conditioned that the article shall not be disposed of unlawfully, the court may direct that said article be delivered to the owner thereof for relabeling or reprocessing or disposal, as the case may be.

(e) When a decree of condemnation is entered against the article, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article. (1971, c. 832, s. 1.)

Part 3. Pesticide Dealers and Manufacturers.

Repeal of Part. — This Part is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-448. Licensing of pesticide dealers; fees. — (a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained for each location or outlet from which restricted-use pesticides are distributed, sold, held for sale, or offered for sale.

(b) Applications for a pesticide dealer license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a fee of twenty-five dollars ($25.00). All licenses issued under this Part shall expire on December 31 of the year for which they are issued.

(c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of twenty-five dollars ($25.00) for each license, on or before the first day of January of the calendar year for which the license is issued.

(d) If an application for renewal of a pesticide dealer's license is not filed on or before January 1 of any year, a penalty of twenty-five percent (25%) of the renewal fee shall be assessed and added to the fee, and shall be paid by the applicant before the renewal license is issued, but such penalty shall not apply if the applicant furnishes an affidavit that he has not distributed, sold, held for sale or offered for sale any restricted-use pesticide subsequent to the expiration of his prior license.

(e) Every licensed pesticide dealer who changes his address or place of business shall immediately notify the Board.

(f) The Board shall issue to each applicant that satisfies the requirements of this Part a license which entitles the applicant to conduct the business described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended. (1971, c. 832, s. 1.)

§ 143-449. Qualifications for pesticide dealer license; examinations. — (a) An applicant for a license must present evidence satisfactory to the Board concerning his qualifications for such license.

(b) Each applicant shall satisfy the Board as to his responsibility in carrying on the business of a pesticide dealer. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide dealer; and his knowledge of the laws and regulations governing the use and sale of pesticides.

(c) The Board shall by regulation:

(1) Designate what persons or class of persons shall be required to pass the examination in the case of a pesticide dealer operating more than one location, and in the case of an applicant that is a corporation, governmental unit or agency, or other organized group;

(2) Provide for renewal license examinations at intervals not more frequent than four years. (1971, c. 832, s. 1; 1975, c. 425, s. 4.)

Editor's Note. — The 1975 amendment deleted the former second sentence of subsection (a), which included subdivisions designated (1) and (2) and which set out the basic qualifications of an applicant.

§ 143-450. Employees of pesticide dealers; dealer's responsibility. — (a) Every licensed pesticide dealer shall submit to the Board with each application for an original or renewal license, and at such other times as the Board may prescribe, the names of all persons employed by him who sell or recommend "restricted-use pesticides."

(b) Each pesticide dealer shall be responsible for the actions of every person who acts as his employee or agent in the solicitation or sale of pesticides, and in all claims and recommendations for use or application of pesticides. (1971, c. 832, s. 1.)

§ 143-451. Denial, suspension and revocation of license. — (a) The Board may suspend for not longer than 30 days, pending inquiry, and, after opportunity for a hearing, the Board may deny, suspend, revoke, or modify the provision of any license issued under this Part, if it finds that the applicant or licensee or his employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;

(2) Made a pesticide recommendation not in accordance with the label registered pursuant to this Article;

(3) Violated any provision of this Article or of any rule or regulation adopted by the Board or of any lawful order of the Board;

(4) Failed to pay the original or renewal license fee when due, and continued to sell restricted-use pesticides without paying the license fee, or sold restricted-use pesticides without a license;

(5) Was guilty of gross negligence, incompetency or misconduct in acting as a pesticide dealer;

(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required, or refusing to make these records available for audit or inspection;

(7) Made false or fraudulent records, invoices, or reports;

(8) Used fraud or misrepresentation, or presented false information, in making an application for a license or renewal of a license, or in selling or offering to sell restricted-use pesticides;

(9) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;

(10) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;

(11) Impersonated any state, county, or city inspector or official;

(12) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations.

(b) Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until such time has elapsed from the date of the order revoking said license as established by the Board (not to exceed two years), or if an appeal is taken from said order or revocation, not to exceed two years from the date of the order or final judgment sustaining said revocation. (1971, c. 832, s. 1; 1975, c. 425, ss. 6, 7.)

Editor's Note. — The 1975 amendment substituted "30 days" for "10 days" near the beginning of the introductory paragraph of subsection (a) and inserted "or presented false information" in subdivision (8) of subsection (a).

Part 4. Pesticide Applicators and Consultants.

Repeal of Part. — This Part is repealed, effective July 1, 1983, by Session Laws 1977, c. 712, s. 4. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143-452. Licensing of pesticide applicators; fees. — (a) No person shall engage in the business of pesticide applicator within this State at any time unless he is licensed annually as a pesticide applicator by the Board.

(b) Applications for a pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a fee of twenty-five dollars ($25.00) for each pesticide applicator's license. In addition, an annual inspection fee of ten dollars ($10.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional ten dollar ($10.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and regulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft in a location and manner prescribed by the Board. No applicator inspection or license fee, original or renewal, shall be charged to State agencies or local governments or their employees. Inspections of ground pesticide application equipment may be made. Any such equipment determined to be faulty or unsafe shall not be used for the purpose of applying a pesticide(s) until such time as proper repairs and/or alterations are made.

(c) If the application for renewal of any license provided for in this Part is not filed prior to January 1 in any year, a penalty fee of twenty-five percent (25%) shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued.

(d) The Board shall classify licenses to be issued under this Part. Separate classifications or subclassifications shall be specified for (i) ground and aerial methods of application, and (ii) State and local government units engaged in the control of rodents and insects of public health significance. The Board may include such further classifications and subclassifications as the Board considers appropriate, including provisions for licensing of apprentice pesticide applicators. For aerial applicators, a license shall be required for both the contractor and the pilot. Each classification and subclassification may be subject to separate testing procedures and requirements.

(e) Every licensed pesticide applicator who changes his address shall immediately notify the Board.

(f) If the Board finds the applicant qualified to apply pesticides in the classifications he has applied for and, if the applicant files the bond or insurance required under G.S. 143-467, and if the applicant applying for a license to engage in aerial application of pesticides has met all of the requirements of the Federal Aviation Agency to operate the equipment described in the application, the Board shall issue a pesticide applicator's license limited to the classifications for which he is qualified. Every such license shall expire at the end of the calendar year of issue unless it has been revoked or suspended prior thereto by the Board for cause, or unless such financial security required under G.S. 143-467 is dated to expire at an earlier date, in which case said license shall be dated to expire upon expiration date of said financial security. The license may restrict the applicant to the use of a certain type or types of equipment or pesticides or to certain areas if the Board finds that the applicant is qualified to use only such type or types. If a license is not issued as applied for, the Board shall inform the applicant in writing of the reasons therefor.

(g) A pesticide applicator's license shall not be transferable. When there is a transfer of ownership, management, or operation of a business of a licensee hereunder, the new owner, manager, or operator (as the case may be) whether it be an individual, firm, partnership, corporation, or other entity, must have available a licensed pesticide applicator to supervise the pesticide application business prior to continuance of such business.

(h) Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of two dollars ($2.00). (1971, c. 832, s. 1; 1973, c. 389, ss. 2, 5; 1977, c. 100.)

Editor's Note. — The 1977 amendment substituted, at the end of subsection (g), "must have available a licensed pesticide applicator to supervise the pesticide application business prior to continuance of such business" for "shall have ninety days from such sale or transfer, or until the next meeting of the Board following the expiration of said 90-day period, to have a qualified licensee to operate said business."

§ 143-453. Qualifications for pesticide applicator's license; examinations. — (a) An applicant for a license must present satisfactory evidence to the Board concerning his qualifications for a pesticide applicator license. The contractor and each pilot involved in aerial application of pesticides shall be licensed. Those qualifications, in the case of a pilot, shall include at least 100 hours flying experience as a pilot in the field of aerial pesticide application. A pilot lacking 100 hours experience as a pilot in the field of aerial pesticide application may be licensed as an apprentice aerial pesticide applicator pilot provided that all aerial applications of pesticide by such licensed aerial pesticide applicator apprentice is conducted under the direction and supervision of a licensed pesticide applicator pilot.

(b) Each applicant shall satisfy the Board as to his knowledge of the laws and regulations governing the use and application of pesticides in the classifications he has applied for (manually or with various equipment that he may have applied for a license to operate), and as to his responsibility in carrying on the business of a pesticide applicator. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide applicator; and his knowledge of the laws and regulations governing the use and application of pesticides in the classification for which he has applied.

(c) The Board shall by regulation:

(1) Designate what persons or class of persons shall be required to pass the examination in the case of an applicant that is a corporation or governmental unit or agency;

(2) Provide for license renewal examinations at intervals not more frequent than four years, or more frequently if found by the Board to be required to be necessary in order to qualify North Carolina's State pesticide control plan for federal approval. (1971, c. 832, s. 1; 1973, c. 389, s. 4; 1975, c. 425, ss. 5, 9; 1977, c. 1125.)

Editor's Note. — The 1975 amendment made changes in subsection (a) as it stood before the 1977 amendment and added the language beginning "or more frequently" at the end of subdivision (2) of subsection (c).

The 1977 amendment rewrote subsection (a).

§ 143-454. Solicitors, salesmen and operators; applicator's responsibility. — (a) Every licensed pesticide applicator shall submit to the Board with each application for an original or renewal license, and at such other times as the Board may prescribe, the names of all solicitors, salesmen and operators employed by him.

(b) Each licensed pesticide applicator shall be responsible for solicitors, salesmen, and operators in his employment to assure that pesticides are used in a manner consistent with the intent of this Article. (1971, c. 832, s. 1.)

§ 143-455. Pest control consultant license. — (a) No person shall perform services as a pest control consultant without first procuring from the Board a license. Applications for a consultant license shall be in the form and shall contain the information prescribed by the Board. The application for a license shall be accompanied by an annual fee of twenty-five dollars ($25.00).

(b) An applicant for a consultant license must present satisfactory evidence to the Board concerning his qualifications for such license. The Board may classify consultant licenses into one or more classifications or subclassifications based upon types of consulting services performed or to be performed. Such classifications and subclassifications may reflect the crops involved in the consulting service, the discipline or training of consultant, the discretion or lack of discretion involved in the consulting service, and the site or location of the service. Each classification and subclassification may be subject to separate testing procedures and requirements, and may be subject to its own minimum standards of training in specialized subject matter from a recognized college or university, or equivalent specialized consulting experience or training. Qualifications for licensing may be less stringent if the licensee is restricted to making recommendations contained in publications recognized by the Board as appropriate for a specific consulting classification or subclassification.

(c) Each applicant shall satisfy the Board as to his responsibility in carrying on the business of a pesticide consultant. Each applicant for an original license must demonstrate upon written, or written and oral, examination to be prescribed by the Board his knowledge of pesticides, their usefulness and their hazards; his competence as a pesticide consultant; and his knowledge of the laws and regulations governing the use and sale of pesticides.

(d) Pest control consultants shall be subject to the same provisions as pesticide applicators concerning penalties for late applications for license, changes of address, transferability of licenses, periodic reexamination, and examinations for corporate applicants. (1971, c. 832, s. 1; 1975, c. 425, s. 10.)

Editor's Note. — The 1975 amendment rewrote that part of subsection (b) following the first sentence.

§ 143-456. Denial, suspension and revocation of license. — (a) The Board may suspend for not longer than 30 days pending inquiry by the Commissioner, and, after opportunity for a hearing, the Board may deny, suspend, revoke, or modify the provisions of any license issued under this Part if it finds that the applicant or licensee or his registered employee has committed any of the following acts, each of which is declared to be a violation of this Part:

(1) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized;
(2) Made a pesticide recommendation or application not in accordance with the label registered pursuant to this Article;
(3) Operated faulty or unsafe equipment;
(4) Operated in a faulty, careless, or negligent manner;
(5) Violated any provision of this Article or of any rule or regulation adopted by the Board or any lawful order of the Board;
(6) Refused or neglected to keep and maintain the records required by this Article, or to make reports when and as required;
(7) Made false or fraudulent records, invoices, or reports;
(8) Operated unlicensed equipment;
(9) Used fraud or misrepresentation, or presented false information, in making an application for a license or renewal of a license;
(10) Refused or neglected to comply with any limitations or restrictions on or in a duly issued license or permit;
(11) Aided or abetted a licensed or an unlicensed person to evade the provisions of this Article, combined or conspired with such a licensed or unlicensed person to evade the provisions of this Article, or allowed one's license to be used by an unlicensed person;
(12) Made false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
(13) Impersonated any state, county, or city inspector or official;

(14) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted regulations;

(15) Failed to pay the original or renewal license fee when due and continued to operate as an applicator, or applied pesticides without a license.

(b) Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until such time has elapsed from the date of the order revoking said license as established by the Board (not to exceed two years), or if an appeal is taken from said order or revocation, not to exceed two years from the date of the order or final judgment sustaining said revocation. (1971, c. 832, s. 1; 1975, c. 425, ss. 6, 8.)

Editor's Note. — The 1975 amendment substituted "30 days" for "10 days" near the beginning of the introductory paragraph of subsection (a) and inserted "or presented false information" in subdivision (9) of subsection (a).

§ 143-457. Damaged person must file report of loss; contents; time for filing; effect of failure to file. — (a) Any person claiming damages from pesticide application shall have filed with the Board a written statement claiming that he has been damaged, on a form prescribed by the Board within 21 days after the date that damages are apparent, or prior to the time that twenty-five percent (25%) of a crop damaged shall have been harvested. Such statement shall contain, but shall not be limited thereto, the name of the person responsible for the application of said pesticide, the name of the owner or lessee of the land on which the crop is grown and for which damages are claimed and the date on which it is alleged that the damage occurred. The Board shall prepare a form to be furnished to persons to be used in such cases and such form shall contain such other requirements as the Board may deem proper. The Board shall, upon receipt of such statement, notify the licensee and the owner or lessee of the land or other person who may be charged with the responsibility, for the damages claimed, and furnish copies of such statements as may be requested.

(b) The filing of such report or the failure to file such a report need not be alleged in any complaint which might be filed in a court of law, and the failure to file the report shall not be considered any bar to the maintenance of any criminal or civil action. The failure to file such a report shall not be a violation of this Article. However, if the person failing to file such a report is the only one injured from such use or application of a pesticide by others, the Board may, when in the public interest, refuse to hold a hearing for the denial, suspension, or revocation of a license or permit issued under this Article until such report is filed. Where damage is alleged to have been done, the claimant shall permit the licensee and his representatives, such as bondsman or insurer, to observe within reasonable hours the lands or nontarget organism alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands shall automatically bar the claim against the licensee. (1971, c. 832, s. 1.)

§ 143-458. Rules and regulations concerning methods of application. — (a) The Board shall have authority to issue regulations after notice and hearing as provided by G.S. 143-463 to carry out the provisions and purpose of this Part and in such regulations may prescribe methods to be used in the application of pesticides. Where the Board finds that such regulations are necessary to carry out the provisions of this Part, such regulations may relate to the time, place, manner, and method of application of the pesticides, may restrict or prohibit sale and use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the Board deems necessary to prevent damage or injury by drift or misapplication to:

(1) Plants, including forage plants, on adjacent or nearby land;
(2) Wildlife in the adjoining or nearby areas;
(3) Fish and other aquatic life in waters in reasonable proximity to the area to be treated; or
(4) Other animals, persons or beneficial insects.

In issuing such regulations, the Board shall give consideration to pertinent research findings and recommendations of other agencies of this State or of the federal government.

(b) The Board may by regulation require that notice of a proposed application of a pesticide be given to landowners adjoining the property to be treated or in the immediate vicinity thereof, if it finds that such notice is necessary to carry out the purpose of this Article. (1971, c. 832, s. 1.)

§ 143-459. Reporting of shipments and volumes of pesticides. — Every person selling pesticides directly to the consumer shall file with the Board, in such manner and with such frequency as the Board may prescribe, reports of purchases, sales and shipments of restricted-use pesticides and other pesticides designated by the Board. Failure to file any report when due shall be cause for suspension or revocation of any license or registration issued under this Article, or for denial of the issuance or renewal of any such license or registration, and shall be a misdemeanor, punishable as provided by G.S. 143-469. The time for reporting may be extended for an additional 15 days for cause, upon written request to the Board. All reports provided under this Part are provided solely for the purposes of the Board. (1971, c. 832, s. 1.)

Part 5. General Provisions.

§ 143-460. Definitions. — As used in this Article, unless the context otherwise requires:

(1) The term "active ingredient" means
  a. In the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;
  b. In the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;
  c. In the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;
  d. In the case of a desiccant, an ingredient which will artificially accelerate the drying of a plant tissue.
(2) The term "adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.
(3) Reserved.
(4) "Board" means the North Carolina Pesticide Board.
(5) "Commissioner" means the North Carolina Commissioner of Agriculture.
(6) "Committee" means the Advisory Committee on Pesticides.
(7) The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.
(8) The term "desiccant" means any substance or mixture of substances intended for artifically accelerating the drying of plant tissues.

(9) The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, weeds, nematodes, or such other pests as may be designated by the Board, but not including equipment used for the application of pesticides when sold separately therefrom.

(10) "Engage in business" means any application of pesticide by any person for use upon lands of another, or any sale of pesticide by any person.

(11) "Equipment" means any type of ground, water or aerial equipment, device, or contrivance using motorized, mechanical or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but shall not include any pressurized hand-sized household device used to apply any pesticide or any equipment, device or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.

(12) The term "fungi" means all nonchlorophyll-bearing thallophytes (that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

(13) The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any fungi.

(14) The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any weed.

(15) The term "inert ingredient" means an ingredient which is not an active ingredient.

(16) The term "ingredient statement" means

a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; and

b. In case the pesticide contains arsenic in any form, a statement of the percentages of total and water-soluble arsenic, each calculated as elemental arsenic.

(17) The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, wasps, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

(18) The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

(19) The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide (or device) or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the pesticide (or device).

(20) The term "labeling" means all labels and other written, printed, or graphic matter:

a. Upon the pesticide (or device) or any of its containers or wrappers;

b. Accompanying the pesticide (or device) at any time;

c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate, nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by law to conduct research in the field of pesticides.

(21) "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, devices and contrivances, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

(22) "Manufacturer" includes any person engaged in the business of importing, producing, preparing, formulating, mixing, or processing pesticides.

(23) The term "misbranded" shall apply:

a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

b. To any pesticide:

1. If it is an imitation of or is offered for sale under the name of another pesticide;
2. If its labeling bears any reference to registration under this Article;
3. If the labeling accompanying it does not contain instructions for use which are necessary and, if complied with, adequate for the protection of the public;
4. If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals;
5. If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase except that the Board may permit the statement to appear prominently on some other part of the container, if the size or form of the container make it impractical to comply with the requirements of this subparagraph;
6. If any word, statement, or other information required by or under the authority of this Article to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or
7. If in the case of an insecticide, nematicide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such pesticides or
8. In the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such pesticides, except that physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations.

(24) The term "nematicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(25) The term "nematode" means invertebrate animals of the phylum nemathelminthes and class Nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

(26) A "person" is any person, including (but not limited to) an individual, firm, partnership, association, company, joint-stock association, public or private institution, municipality or county or local government unit (as defined in G.S. 143-215.40(b)), state or federal governmental agency, or private or public corporation organized under the laws of this State or the United States or any other state or country.

(27) "Pest control consultant" means any person, who, for a fee, offers or supplies technical advice, supervision, or aid, or recommends the use of specific pesticides for the purpose of controlling insects, plant diseases, weeds, and other pests, but does not include any person regulated by the North Carolina Structural Pest Control Act (G.S. Chapter 106, Article 4C).

(28) The term "pesticide" means
  a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Board shall declare to be a pest, and
  b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(29) "Pesticide applicator" includes any person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands or properties of another; any public operator; any private golf course operator; any seed treater; any person engaged in demonstration or research pest control; and any other person who acts as a pesticide applicator and is not exempt from this definition. It does not include:
  a. Any person who uses or supervises the use of a pesticide (i) only for the purpose of producing an agricultural commodity on property owned or rented by him or his employer, or (ii) only (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person, or (iii) only for the purposes set forth in (i) and (ii) above.
  b. Any person regulated by the North Carolina Structural Pest Control Law (G.S. Chapter 106, Article 4C).

(30) The term "pesticide dealer" means any person who is engaged in the business of distributing, selling, offering for sale, or holding for sale restricted-use pesticides for distribution directly to users. The term pesticide dealer does not include:
  a. Persons whose sales of pesticides are limited to pesticides in consumer-sized packages (as defined by the Board) which are labeled and intended for home and garden use only and are not restricted-use pesticides, or
  b. Practicing veterinarians and physicians who prescribe, dispense, or use pesticides in the performance of their professional services.

(31) Repealed by Session Laws 1973, c. 389, s. 3.

(32) The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Public operator" means any person in charge of any equipment used by public utilities (as defined by General Statutes Chapter 62), State agencies, municipal corporations, or other governmental agencies applying pesticides.

(34) The term "registrant" means the person registering any pesticide pursuant to the provisions of this Article.

(35) The term "restricted-use pesticide" means a pesticide which the Board has designated as such pursuant to G.S. 143-440.

(36) The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, attracting, or mitigating rodents or any other vertebrate animal which the Board shall declare to be a pest.

(37) The term "weed" means any plant or part thereof which grows where not wanted.

(38) "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this Article, pests; including but not limited to mammals, birds, and aquatic life. (1971, c. 832, s. 1; 1973, c. 389, s. 3; 1975, c. 425, s. 11.)

Cross Reference. — See Editor's note under §143-434.

Editor's Note. — The 1975 amendment substituted "includes" for "means" near the beginning of the first sentence of subdivision (29), inserted "or properties" near the middle of that sentence and added at the end of that sentence the language beginning "any public operator," deleted "includes public operators, but" following "It" at the beginning of the second sentence of subdivision (29) and rewrote paragraph a of subdivision (29).

§ 143-461. General powers of Board. — In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Board shall have the power, at any time and from time to time:

(1) To adopt from time to time and to modify and revoke official regulations interpreting and applying the provisions of this Article and rules of procedure establishing and amplifying the procedures to be followed in the administration of this Article: provided, that no such regulations and no rules of procedure shall be effective nor enforceable until published and filed as prescribed by G.S. 143-463. Unless the Board deems there are overriding policy considerations involved, any regulation of the Board, which will in the judgment of the Board result in severe curtailment of the usefulness or value of inventories or equipment in the hands of persons licensed under this Article, should be given a future effective date so as to minimize undue potential economic loss to licensees;

(2) To authorize the Commissioner by proclamation (i) to suspend or implement, in whole or in part, particular regulations of the Board which may be affected by variable conditions, or (ii) to suspend the application of any provision of this Part to any federal or State agency if it is determined by the Commissioner that emergency conditions require such action.

(3) To conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed by this Article;

(4) To conduct public hearings in accordance with the procedures prescribed by this Article;

(5) To delegate such of the powers of the Board as the Board deems necessary (other than its powers to adopt rules and regulations of any kind) to one or more of its members, to the Commissioner, or to any qualified employee of the Board or of the Commissioner; provided, that the provisions of any such delegation of power shall be set forth in the official regulations of the Board. Any person to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Board for decision;

(6) To call upon the Attorney General for such legal advice and assistance as is necessary to the functioning of the Board;

(7) To institute such actions in the superior court in the county in which any defendant resides, or has his or its principal place of business, as the Board may deem necessary for the enforcement of any of the provisions of this Article or of any official actions of the Board, including proceedings to enforce subpoenas or for the punishment of contempt of the Board. Upon violation of any of the provisions of this Article, or of any regulation of the Board adopted under the authority of this Article the Board may, either before or after the institution of any other proceedings (civil or criminal), institute a civil action in the superior court in the name of the State for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any other penalty or remedy prescribed by this Article for any violation of same;

(8) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings. (1971, c. 832, s. 1; 1973, c. 389, s. 6.)

§ 143-462. Procedures for revocations and related actions affecting licenses. — In all proceedings, the effect of which would be to revoke, suspend, deny, or withhold renewal of a license issued under Part 3 or Part 4 of this Article, or to deny permission to take an examination for such a license, the provisions of Chapter 150A of the General Statutes shall be applicable. (1971, c. 832, s. 1.)

§ 143-463. Procedures for adoption of certain rules and regulations; publication of rules and regulations. — (a) Prior to the adoption by the Board of rules or regulations authorized by G.S. 143-440, 143-441, or G.S. 143-458, the Board shall conduct one or more public hearings with respect to any such proposed action, in accordance with the procedures prescribed by subsection (b) of this section.

(b) The following provisions shall apply to the public hearings required by subsection (a) of this section:

(1) Notice of any such hearing shall be given not less than 20 days before the date of such hearing and shall state the date, time, and place of hearing, the subject of the hearing, and the action which the Board proposes to take. The notice shall either include details of such proposed action, or where such proposed action is too lengthy for publication, as hereinafter provided for, the notice shall specify that copies of such detailed proposed action can be obtained on request from the office of the Board in sufficient quantity to satisfy the requests of all interested persons.

(2) Any such notice shall be published at least once in one newspaper of general circulation in the State, and a copy of such notice shall be mailed

to each person on the mailing list required to be kept by the Board pursuant to the provisions of G.S. 143-464.

(3) Any person who desires to be heard at any such public hearing shall give notice thereof in writing to the Board on or before the first date set for the hearing. The Board is authorized to set reasonable time limits for the oral presentation of views by any one person at any such public hearing. The Board shall permit anyone who so desires to file a written argument or other statement with the Board in relation to any proposed action of the Board any time within 30 days following the conclusion of any public hearing or within any such additional time as the Board may allow by notice given as prescribed in this section.

(c) Upon completion of hearings and consideration of submitted evidence and arguments with respect to any proposed action of the Board pursuant to this section, the Board shall adopt its final action with respect thereto and shall publish such final action as part of its official regulations.

(d) The Board is empowered to modify or revoke from time to time any final action previously taken by it pursuant to the subjects referred to in subsection (a); any such modification or revocation, however, to be subject to the procedural requirements of this section.

(e) All official acts of the Board which have or are intended to have general application effect shall be incorporated either in the Board's official regulations (applying and interpreting this Article), or in its rules of procedure. All such regulations and rules shall upon adoption thereof by the Board be printed (or otherwise duplicated), and a duly certified copy thereof shall immediately be filed with the Attorney General. One copy of each such action shall at the same time be mailed to all persons then on the mailing list, and additional copies shall at all times be kept at the office of the Board in sufficient numbers to satisfy all reasonable requests therefor. (1971, c. 832, s. 1; 1975, 2nd Sess., c. 983, s. 84.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted "Attorney General" for "Secretary of State" at the end of the second sentence in subsection (e) and deleted the former last sentence of subsection (e), which required the Board to codify its regulations and rules and from time to time to bring its codifications up to date.

§ 143-464. Procedures with respect to registration of pesticides and certain other matters; mailing list; seal; judicial review. — (a) In any proceeding wherein an application for registration of a pesticide is refused or the Board proposes to suspend or cancel a registration, the Board shall give notice with respect to all steps of the proceeding only to each person directly affected by such proceedings who shall be made a party thereto. The Board shall also apprise all persons on its mailing list on the date when the action is taken of all of its official acts (such as the adoption of regulations or rules of procedure) which have, or are intended to have general application and effect. It shall be the duty of the Board to keep such a mailing list on which it shall record the name and address of each person who requests listing thereon, together with the date of receipt of such request. Any person may, by written request to the Board, ask to be permanently recorded on such mailing list.

(b) All notices which are required to be given by the Board or by any party to a proceeding shall be given by regular mail to all persons entitled thereto, including the Board. The certificate of the person designated by the Board to mail such notices that the notices were mailed, giving the mailing date, shall be conclusive in the absence of fraud. Notice by the Board may be given to any person upon whom a summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. Any notice shall be sufficient if it reasonably sets forth the action requested or demanded or gives information as to action taken. The Board by its rules of procedure may prescribe other necessary practices and procedures with regard to the form, content and procedure as to any particular notices.

(c) The following provisions, together with any additional provisions not inconsistent herewith which the Board may prescribe, shall be applicable in connection with hearings pursuant to this Article, except where other provisions are applicable in connection with specific types of hearings:

(1) Any hearing held pursuant to G.S. 143-442 whether called at the instance of the Board or of any person, shall be held upon not less than 30 days' written notice given by the Board to any person who is, or is entitled to be, a party to the proceedings with respect to which such hearing is to be held, unless a shorter notice is agreed upon by all such parties.

(2) All hearings shall be before the Board or its authorized agent or agents, and the hearing shall be open to the public. The Board, or its authorized agents, shall have the authority to administer oaths.

(3) A full and complete record of all proceedings at any hearing shall be taken by a reporter appointed by the Board or by some other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Board.

(4) The Board shall follow generally the procedures applicable in civil actions in the superior court insofar as practicable, including rules and procedures with regard to the taking and use of depositions, the making and use of stipulations, and the entering into of agreed settlements and consent orders.

(5) Subpoenas or subpoenas duces tecum issued by the Board on its own behalf or on behalf of a party to the proceeding in connection with any hearing, shall be directed to any officer authorized by law to serve process, and the further procedures and rules of law applicable with respect thereto shall be prescribed in connection with subpoenas to the same extent as if issued by a court of record. In case of a refusal to obey a notice of hearing or subpoena issued by the Board, application may be made to the superior court of the appropriate county for enforcement thereof.

(6) The burden of proof at any hearing shall be upon the person or the Board, as the case may be, at whose instance the hearing is being held.

(7) Without regard to subdivision (6) of this subsection, the burden of proof to justify the safety of any pesticide shall be upon the applicant for registration or for licenses or permits to use, apply or sell pesticides.

(8) No decision or order of the Board shall be made in any proceeding unless the same is supported by competent, material and substantial evidence upon consideration of the whole record.

(9) Following any hearing, the Board shall afford the parties thereto a reasonable opportunity to submit within such time as prescribed by the Board proposed findings of fact and conclusions of law and any brief in connection therewith. The record in the proceeding shall show the Board's ruling with respect to each such requested finding of fact and conclusion of law.

(10) All orders and decisions of the Board shall set forth separately the Board's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Board is based.

(11) The Board shall have the authority to adopt a seal which shall be the seal of said Board and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, regulation, rule of procedure or any other official act or records of the Board or its minutes may be certified by the chairman or

secretary of the Board under his hand and the seal of the Board and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action or proceeding. The Board shall have the right to take judicial notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Board or by any other person or interested party where material, relevant and competent.

(d) Any person who is aggrieved by a final decision of the Board in any matter shall have a right of appeal to the superior court pursuant to the provisions of Chapter 150A of the General Statutes. (1971, c. 832, s. 1.)

§ 143-465. Reciprocity; intergovernmental cooperation. — (a) The Board may issue any license required by this Article on a reciprocal basis with other states without examination to a nonresident who is licensed in another state substantially in accordance with any of the provisions of the Article, provided that financial security as provided for in G.S. 143-467 is met.

(b) The Board may cooperate or enter into formal agreements with any other agency of this State or its subdivisions or with any agency of any other state or of the federal government for the purpose of enforcing any of the provisions of this Article.

(c) In order to avoid confusion resulting from diverse requirements and to avoid increased costs to the people of this State due to the necessity of complying with such diverse requirements in the manufacture and sale of such pesticides, it is desirable that there should be uniformity between the requirements of the several states and the federal government relating to such pesticides. To this end the Board is authorized, after public hearing, to adopt by regulation such regulations, applicable to and in conformity with the primary standards established by this Article, as have been or may be prescribed with respect to pesticides by departments or agencies of the United States government. (1971, c. 832, s. 1.)

§ 143-466. Records; information; inspection; enforcement. — (a) The Board shall require licensees to maintain records with respect to the sale and application of such pesticides as it may from time to time prescribe. Such relevant information as the Board may deem necessary may be specified by regulation. Such records shall be kept for a period of three years from the date of the application of the pesticide to which such records refer, and shall be available for inspection by the Board or its agents at its request.

(b) The Board may publish information regarding injury which may result from improper application or use of pesticides and the methods and precautions designed to prevent such injury.

(c) The Board may provide for inspection of any equipment used for application of pesticides and may require repairs or other changes before its further use for pesticide application. A list of requirements that equipment shall meet may be adopted by the Board by regulation.

(d) The Board may provide for inspection of any place of business where pesticides are stored or sold and may require changes in methods of handling, displaying and storing of all pesticides. A list of requirements that places of business must meet may be adopted by regulation of the Board.

(e) For the purpose of carrying out the provisions of this Article, inspectors designated by the Board may enter upon any public or private premises at reasonable times, in order:

(1) To have access for the purpose of inspecting the premises and any equipment subject to this Article and such premises on which such equipment is kept or stored;
(2) To inspect lands actually or reported to be exposed to pesticides;
(3) To inspect storage or disposal areas;
(4) To inspect or investigate complaints of injury to humans, land or plants; or
(5) To sample pesticides being applied, or to be applied.

No person shall refuse entry or access to any authorized representative of the Board who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties. Should the Board or its designated agent be denied access to any land where such access was sought for the purposes set forth in this Article, the Board may apply to any court of competent jurisdiction for a search warrant authorizing access to such land for said purposes. The court may upon such application issue the search warrant for the purposes requested. (1971, c. 832, s. 1.)

§ 143-467. Financial responsibility. — (a) The Board may require from a licensee or an applicant for a license under this Article evidence of his financial ability to properly indemnify persons suffering damage from the use or application of pesticides, in the form of a surety bond, liability insurance or cash deposit. The amount of this bond, insurance or deposit shall be determined by the Board, in light of the risk of damage. The indemnification requirements may extend to damage to persons and property from equipment used (including aircraft).

(b) The Board may also require a reasonable performance bond with satisfactory surety to secure the performance of contractual obligations of the licensee, with respect to application of pesticides. Any person injured by the breach of any such obligation or any person damaged by pesticides or by equipment used in their application shall be entitled to sue on the bond in his own name in any court of competent jurisdiction to recover the damages he may have sustained.

(c) Any regulations adopted by the Board pursuant to G.S. 143-461 to implement this section may provide for such conditions, limitations and requirements concerning the financial responsibility required by this section as the Board deems necessary, including but not limited to notice of reduction or cancellation of coverage, deductible provisions, and acceptability of surety. Such regulations may classify financial responsibility requirements according to the separate license classifications and subclassifications prescribed by the Board pursuant to G.S. 143-452 and the dealer category (Part 3 of this Article). (1971, c. 832, s. 1.)

§ 143-468. Disposition of fees. — All fees and charges received by the Board under this Article shall be deposited in the Department of Agriculture General Fund Budget for the purpose of administration and enforcement of this Article, with proper approved accounting procedures accounting for all expenditures and receipts. (1971, c. 832, s. 1.)

§ 143-469. Penalties. — Any person who shall be adjudged to have violated any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a misdemeanor, and for each violation shall be liable for a penalty of not less than one hundred ($100.00) nor more than one thousand dollars ($1,000) or shall be imprisoned for not more than 60 days, or both. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Board, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties. (1971, c. 832, s. 1.)

§ 143-470. Provisional or interim licenses. — The Board is hereby authorized to adopt regulations providing for the issuance of interim or provisional licenses to any or all categories of licensees under this Article. Such regulations, among other things, may waive any particular license requirements, may reduce any license qualification or requirement, and may provide for the phasing of the effectuation of any license requirement. No interim or provisional license issued pursuant to this section shall have an expiration date later than December 31, 1973. (1971, c. 832, s. 1.)

ARTICLE 53.

North Carolina Drug Authority.

§§ 143-471 to 143-475: Repealed by Session Laws 1975, c. 879, s. 18.

§ 143-475.1. State Drug Education Program. — (a) Pursuant to G.S. 90-113.4, G.S. 143-473 and this section, the North Carolina Drug Authority shall establish a State Drug Education Program. This program shall consist of the following:

(1) Drug prevention education and training for public school teachers, counselors and administrators;

(2) Drug prevention education and training for community organizations and county/community resource personnel;

(3) Development of a drug education curriculum for use by teachers in the public schools of the State.

(b) All funds appropriated to the North Carolina Drug Authority for the above-stated purposes shall be used to contract with existing public agencies and/or private nonprofit corporations for implementation of the program. In no case shall the North Carolina Drug Authority undertake to implement the program.

(c) Contracts with existing public agencies and/or private nonprofit corporations shall be instituted to achieve the following goals of a State Drug Education Program:

(1) To provide drug prevention education training for public school teachers, counselors and administrators. This program shall familiarize teachers, counselors and administrators with the youth drug culture by instruction in basic drug information, the legal aspects of drug abuse, alternatives to drug usage and methods of correlating health information, value development, coping skills and decision-making skills into the general curriculum. Said program shall be consonant with the North Carolina State Plan for Drug Abuse Prevention and approved by the North Carolina Drug Authority.

(2) Implementation of a community resource development program. This program shall develop systems on a county level for drug abuse prevention/education/treatment programs through training of county agency and organization personnel at the local level. This program shall also offer drug prevention education to private citizens and local community groups.

(3) To develop a curriculum for all grades which will integrate education in health, value development, coping skills and decision-making skills throughout the general school curriculum.

(d) In implementing the State Drug Education Program, the object shall be for all facets of the program to have a statewide effect, with emphasis on those geographic areas and localities where in the opinion of the North Carolina Drug Authority, the need for such programs is greatest.

(e) Prior to the expenditure of the funds for any program authorized by this section, the North Carolina Drug Authority shall approve said program and insure that said program and services funded are consonant with the North Carolina State Plan for Drug Abuse Prevention. Any deviation by a contractee of the Drug Authority from the program approved by the Authority shall be grounds for termination of the contract and renovation of funding. (1973, c. 587, ss. 1-5.)

Editor's Note. — Session Laws 1975, c. 879, s. 18 repealed "Article 53 of Chapter 143 of the General Statutes of North Carolina being Sections 143-471 through 143-475."

The reference to § 90-113.4 in the first sentence of this section should be to § 90-113.3.

ARTICLE 54.

North Carolina Council on State Goals and Policy Act.

§§ 143-476 to 143-482: Repealed by Session Laws 1975, c. 879, s. 9.

Cross Reference. — As to the State Goals and Policy Board, see §§ 143B-371, 143B-372.

§§ 143-483 to 143-489: Reserved for future codification purposes.

ARTICLE 55.

The Southern Growth Policies Agreement.

§ 143-490. Compact enacted into law. — The Southern Growth Policies Agreement is hereby enacted into law and entered into by this State with all other states legally joining therein in the form substantially as follows. (1973, c. 200, s. 1.)

§ 143-491. Article I. Findings and Purposes. — (a) The party states find that the South has a sense of community based on common social, cultural and economic needs and fostered by a regional tradition. There are vast potentialities for mutual improvement of each state in the region by cooperative planning for the development, conservation and efficient utilization of human and natural resources in a geographic area large enough to afford a high degree of flexibility in identifying and taking maximum advantage of opportunities for healthy and beneficial growth. The independence of each state and the special needs of subregions are recognized and are to be safeguarded. Accordingly, the cooperation resulting from this Agreement is intended to assist the states in meeting their own problems by enhancing their abilities to recognize and analyze regional opportunities and take account of regional influences in planning and implementing their public policies.

(b) The purposes of this Agreement are to provide:

(1) Improved facilities and procedures for study, analysis and planning of governmental policies, programs and activities of regional significance.

(2) Assistance in the prevention of interstate conflicts and the promotion of regional cooperation.

(3) Mechanisms for the coordination of state and local interests on a regional basis.

(4) An agency to assist the states in accomplishing the foregoing. (1973, c. 200, s. 1.)

§ 143-492. Article II. The Board. — (a) There is hereby created the Southern Growth Policies Board, hereinafter called "the Board."

(b) The Board shall consist of five members from each party state, as follows:

(1) The governor.

(2) Two members of the state legislature, one appointed by the presiding officer of each house of the legislature or in such other manner as the legislature may provide.

(3) Two residents of the state who shall be appointed by the governor to serve at his pleasure.

(c) In making appointments pursuant to paragraph (b) (3), a governor shall, to the greatest extent practicable, select persons who, along with the other members serving pursuant to paragraph (b), will make the state's representation on the Board broadly representative of the several socioeconomic elements within his state.

(d) (1) A governor may be represented by an alternate with power to act in his place and stead, if notice of the designation of such alternate is given to the Board in such manner as its bylaws may provide.

(2) A legislative member of the Board may be represented by an alternate with power to act in his place and stead, unless the laws of his state prohibit such representation and if notice of the designation of such alternate is given to the Board in such manner as its bylaws may provide. An alternate for a legislative member of the Board shall be selected by the member from among the members of the legislative house in which he serves.

(3) A member of the Board serving pursuant to paragraph (b) (3) of this Article may be represented by another resident of his state who may participate in his place and stead, except that he shall not vote: Provided that notice of the identity and designation of the representative selected by the member is given to the Board in such manner as its bylaws may provide. (1973, c. 200, s. 1.)

§ 143-493. Article III. Powers. — (a) The Board shall prepare and keep current a statement of regional objectives, including recommended approaches to regional problems. The statement may also identify projects deemed by the Board to be of regional significance. The statement shall be available in its initial form two years from the effective date of this Agreement and shall be amended or revised no less frequently than once every six years. The statement shall be in such detail as the Board may prescribe. Amendments, revisions, supplements or evaluations may be transmitted at any time. An annual commentary on the statement shall be submitted at a regular time to be determined by the Board.

(b) In addition to powers conferred on the Board elsewhere in this Agreement, the Board shall have the power to make or commission studies, investigations and recommendations with respect to:

(1) The planning and programming of projects of interstate or regional significance.

(2) Planning and scheduling of governmental services and programs which would be of assistance to the orderly growth and prosperity of the region, and to the well-being of its population.

(3) Effective utilization of such federal assistance as may be available on a regional basis or as may have an interstate or regional impact.

(4) Measures for influencing population distribution, land use, development of new communities and redevelopment of existing ones.

(5) Transportation patterns and systems of interstate and regional significance.

(6) Improved utilization of human and natural resources for the advancement of the region as a whole.

(7) Any other matters of a planning, data collection or informational character that the Board may determine to be of value to the party states. (1973, c. 200, s. 1.)

§ 143-494. Article IV. Avoidance of Duplication. — (a) To avoid duplication of effort and in the interest of economy, the Board shall make use of existing studies, surveys, plans and data and other materials in the possession of the governmental agencies of the party states and their respective subdivisions or in the possession of other interstate agencies. Each such agency, within available appropriations and if not expressly prevented or limited by law, is hereby authorized to make such materials available to the Board and to otherwise assist it in the performance of its functions. At the request of the Board, each such agency is further authorized to provide information regarding plans and programs affecting the region, or any subarea thereof, so that the Board may have available to it current information with respect thereto.

(b) The Board shall use qualified public and private agencies to make investigations and conduct research, but if it is unable to secure the undertaking of such investigations or original research by a qualified public or private agency, it shall have the power to make its own investigations and conduct its own research. The Board may make contracts with any public or private agencies or private persons or entities for the undertaking of such investigations or original research within its purview.

(c) In general, the policy of paragraph (b) of this Article shall apply to the activities of the Board relating to its statement of regional objectives, but nothing herein shall be construed to require the Board to rely on the services of other persons or agencies in developing the statement of regional objectives or any amendment, supplement or revision thereof. (1973, c. 200, s. 1.)

§ 143-495. Article V. Advisory Committees. — The Board shall establish a Local Governments Advisory Committee. In addition, the Board may establish advisory committees representative of subregions of the South, civic and community interests, industry, agriculture, labor or other categories or any combinations thereof. Unless the laws of a party state contain a contrary requirement, any public official of the party state or a subdivision thereof may serve on an advisory committee established pursuant hereto and such service may be considered as a duty of his regular office or employment. (1973, c. 200, s. 1.)

§ 143-496. Article VI. Internal Management of the Board. — (a) The members of the Board shall be entitled to one vote each. No action of the Board shall be binding unless taken at a meeting at which a majority of the total number of votes on the Board are cast in favor thereof. Action of the Board shall be only at a meeting at which a majority of the members or their alternates are present. The Board shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the Board may delegate the exercise of any of its powers relating to internal administration and management to an Executive Committee or the Executive Director. In no event shall any such delegation include final approval of:

(1) A budget or appropriation request.
(2) The statement of regional objectives or any amendment, supplement or revision thereof.
(3) Official comments on or recommendations with respect to projects of interstate or regional significance.
(4) The annual report.

(b) To assist in the expeditious conduct of its business when the full Board is not meeting, the Board shall elect an Executive Committee of not to exceed 17 members, including at least one member from each party state. The Executive Committee, subject to the provisions of this Agreement and consistent with the policies of the Board, shall be constituted and function as provided in the bylaws of the Board. One half of the membership of the Executive Committee shall consist of governors, and the remainder shall consist of other members of the Board, except that at any time when there is an odd number of members on the Executive Committee, the number of governors shall be one less than half of the total membership. The members of the Executive Committee shall serve for terms of two years, except that members elected to the first Executive Committee shall be elected as follows: One less than half of the membership for two years and the remainder for one year. The Chairman, Chairman-Elect, Vice-Chairman and Treasurer of the Board shall be members of the Executive Committee and anything in this paragraph to the contrary notwithstanding shall serve during their continuance in these offices. Vacancies in the Executive Committee shall not affect its authority to act, but the Board at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term.

(c) The Board shall have a seal.

(d) The Board shall elect, from among its members, a Chairman, a Chairman-Elect, a Vice-Chairman and a Treasurer. Elections shall be annual. The Chairman-Elect shall succeed to the office of Chairman for the year following his service as Chairman-Elect. For purposes of the election and service of officers of the Board, the year shall be deemed to commence at the conclusion of the annual meeting of the Board and terminate at the conclusion of the next annual meeting thereof. The Board shall provide for the appointment of an Executive Director. Such Executive Director shall serve at the pleasure of the Board, and together with the Treasurer and such other personnel as the Board may deem appropriate shall be bonded in such amounts as the Board shall determine. The Executive Director shall be Secretary.

(e) The Executive Director, subject to the policy set forth in this Agreement and any applicable directions given by the Board, may make contracts on behalf of the Board.

(f) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the Executive Director, subject to the approval of the Board, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the Board, and shall fix the duties and compensation of such personnel. The Board in its bylaws shall provide for the personnel policies and programs of the Board.

(g) The Board may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(h) The Board may accept for any of its purposes and functions under this Agreement any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Board pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the annual report of the Board. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(i) The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

(j) The Board shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Board shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The Board annually shall make to the governor and legislature of each party state a report covering the activities of the Board for the preceding year. The Board at any time may make such additional reports and transmit such studies as it may deem desirable.

(l) The Board may do any other or additional things appropriate to implement powers conferred upon it by this Agreement. (1973, c. 200, s. 1.)

§ 143-497. Article VII. Finance. — (a) The Board shall advise the governor or designated officer or officers of each party state of its budget of estimated expenditures for such period as may be required by the laws of that party state. Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

(b) The total amount of appropriation requests under any budget shall be apportioned among the party states. Such apportionment shall be in accordance with the following formula:

(1) One third in equal shares,
(2) One third in the proportion that the population of a party state bears to the population of all party states, and
(3) One third in the proportion that the per capita income in a party state bears to the per capita income in all party states.

In implementing this formula, the Board shall employ the most recent authoritative sources of information and shall specify the sources used.

(c) The Board shall not pledge the credit of any party state. The Board may meet any of its obligations in whole or in part with funds available to it pursuant to Article VI(h) of this Agreement, provided that the Board takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the Board makes use of funds available to it pursuant to Article VI(h), or borrows pursuant to this paragraph, the Board shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same. The Board may borrow against anticipated revenues for terms not to exceed two years, but in any such event the credit pledged shall be that of the Board and not of a party state.

(d) The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Board.

(e) The accounts of the Board shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Board.

(f) Nothing contained herein shall be construed to prevent Board compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Board. (1973, c. 200, s. 1.)

§ 143-498. Article VIII. Cooperation with the Federal Government and Other Governmental Entities. — Each party state is hereby authorized to participate in cooperative or joint planning undertakings with the federal government, and any appropriate agency or agencies thereof, or with any interstate agency or agencies. Such participation shall be at the instance of the governor or in such manner as state law may provide or authorize. The Board may facilitate the work of state representatives in any joint interstate or cooperative federal-state undertaking authorized by this Article, and each such state shall keep the Board advised of its activities in respect of such undertakings, to the extent that they have interstate or regional significance. (1973, c. 200, s. 1.)

§ 143-499. Article IX. Subregional Activities. — The Board may undertake studies or investigations centering on the problems of one or more selected subareas within the region: Provided that in its judgment, such studies or investigations will have value as demonstrations for similar or other areas within the region. If a study or investigation that would be of primary benefit to a given state, unit of local government, or intrastate or interstate area is proposed, and if the Board finds that it is not justified in undertaking the work for its regional value as a demonstration, the Board may undertake the study or investigation as a special project. In any such event, it shall be a condition precedent that satisfactory financing and personnel arrangements be concluded to assure that the party or parties benefited bear all costs which the Board determines that it would be inequitable for it to assume. Prior to undertaking any study or investigation pursuant to this Article as a special project, the Board shall make reasonable efforts to secure the undertaking of the work by another responsible public or private entity in accordance with the policy set forth in Article IV(b). (1973, c. 200, s. 1.)

§ 143-500. Article X. Comprehensive Land Use Planning. — If any two or more contiguous party states desire to prepare a single or consolidated comprehensive land use plan, or a land use plan for any interstate area lying partly within each such state, the governors of the states involved may designate the Board as their joint agency for the purpose. The Board shall accept such designation and carry out such responsibility: Provided that the states involved make arrangements satisfactory to the Board to reimburse it or otherwise provide the resources with which the land use plan is to be prepared. Nothing contained in this Article shall be construed to deny the availability for use in the preparation of any such plan of data and information already in the possession of the Board or to require payment on account of the use thereof in addition to payments otherwise required to be made pursuant to other provisions of this Agreement. (1973, c. 200, s. 1.)

§ 143-501. Article XI. Compacts and Agencies Unaffected. — Nothing in this Agreement shall be construed to:

(1) Affect the powers or jurisdiction of any agency of a party state or any subdivision thereof.

(2) Affect the rights or obligations of any governmental units, agencies or officials, or of any private persons or entities conferred or imposed by any interstate or interstate-federal compacts to which any one or more states participating herein are parties.

(3) Impinge on the jurisdiction of any existing interstate-federal mechanism for regional planning or development. (1973, c. 200, s. 1.)

§ 143-502. Article XII. Eligible Parties; Entry into and Withdrawal. — (a) This Agreement shall have as eligible parties the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

(b) Any eligible state may enter into this Agreement and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least five states shall be required.

(c) Adoption of the Agreement may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1973. During any period when a state is participating in this Agreement through gubernatorial action, the governor may provide to the

Board an equitable share of the financial support of the Board from any source available to him. Nothing in this paragraph shall be construed to require a governor to take action contrary to the constitution or laws of his state.

(d) Except for a withdrawal effective on December 31, 1973, in accordance with paragraph (c) of this Article, any party state may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal. (1973, c. 200, s. 1.)

§ 143-503. Article XIII. Construction and Severability. — This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any state participating therein, the Agreement shall remain in full force and effect as to the state affected as to all severable matters. (1973, c. 200, s. 1.)

§ 143-504. Copies of bylaws and amendments to be filed. — Copies of bylaws and amendments to be filed pursuant to Article VI(j) of the Agreement shall be filed with chief state records-keeping agency. (1973, c. 200, s. 2.)

§ 143-505. Continuance of states as parties. — Nothing contained in the Southern Growth Policies Agreement as enacted by this Article shall in any event be construed to terminate the participation of this State with any state which adopted the Southern Growth Policies Agreement prior to the effective date of this Article, except that the provisions of Article XII(c) shall govern with respect to the continuance of states as parties thereto after December 31, 1973. (1973, c. 200, s. 3.)

§ 143-506. Rights of State and local governments not restricted. — No section, Article, or provision contained herein shall be construed so as to prohibit, restrict or restrain the actions of any individual member state or the actions of any county or municipal government within the boundaries of any individual member state nor shall any delegate from the State of North Carolina be authorized by this General Assembly to cast any vote that would in any manner restrict the sovereign rights presently granted to or retained by this State under the United States Constitution, or the rights of any local governments granted by the Constitution of the State of North Carolina or by statutory acts of the General Assembly. (1973, c. 200, s. 4.)

ARTICLE 56.

Emergency Medical Services Act of 1973.

§ 143-507. Establishment of emergency medical services program. — (a) There is hereby established a comprehensive emergency medical services program in the Department of Human Resources. All responsibility for this program shall be vested in the Secretary of the Department of Human Resources and other such officers, boards, and commissions specified by law or regulation.

(b) This Article is to enable and assist providers of emergency medical services in the delivery of adequate emergency medical services for all the people of North Carolina and the provision of medical care during a disaster.

(c) Emergency medical services referred to in this Article include all services rendered in responding to the individual's need for immediate medical care in order to prevent loss of life or further aggravation of physiological or psychological illness or injury. Emergency medical care is further described as first aid by members of the community; public knowledge and easy access into the system; prompt dispatch of well designed, equipped, and staffed ambulances; effective care by trained attendants at the scene of the emergency and while in transit; communications with the treatment center while at the scene and while in transit; routing and referral to the appropriate treatment facility; immediate definitive care at the emergency treatment facility; and follow-up lifesaving and restorative care. (1973, c. 208, s. 1.)

§ 143-508. Department of Human Resources to establish program; rules and regulations of North Carolina Medical Care Commission. — The State Department of Human Resources shall establish and maintain a program for the improvement and upgrading of emergency medical services throughout the State. The Department shall consolidate all State functions relating to emergency medical services, both regulatory and developmental, under the auspices of this program.

The North Carolina Medical Care Commission is authorized and directed to adopt rules and regulations to carry out the purpose of this Article and Article 26 of Chapter 130 of the General Statutes of North Carolina. Such rules and regulations shall be adopted with the advice of the Emergency Medical Services Advisory Council. All rules and regulations not inconsistent with the provisions of this Article heretofore adopted by the State Board of Health or the Commission for Health Services shall remain in full force and effect until repealed or superseded by action of the North Carolina Medical Care Commission. (1973, c. 208, s. 2; c. 1224, s. 2.)

§ 143-509. Powers and duties of Secretary. — The Secretary of the Department of Human Resources has full responsibilities for supervision and direction of the emergency medical services program and, to that end, shall:

(1) After consulting with the Emergency Medical Services Advisory Council and with such local governments as may be involved, seek the establishment of statewide, regional and local emergency medical services operations;

(2) Develop a system for classifying and categorizing hospitals as to kinds and levels of emergency treatment they normally and regularly provide and shall make this information available and known to ambulance service providers, health care facilities and to the general public;

(3) Encourage and assist in the development of appropriately located comprehensive emergency treatment centers;

(4) Encourage and assist in the development of a statewide emergency medical services communications system which will enable transport vehicles to communicate with treatment facilities;

(5) Establish a State emergency medical services records system;

(6) Inspect ambulances, issue permits for operation of ambulance vehicles, train and license ambulance personnel and shall be responsible for the enforcement of all other quality control provisions of the Ambulance Act of 1967, Article 26 of Chapter 130 of the General Statutes of North Carolina;

(7) Designate emergency medical services radio frequencies and coordinate emergency medical services radio communications networks within FCC rules and regulations; and

(8) Promote the development of an air ambulance support system to supplement ground vehicle operations. (1973, c. 208, s. 3.)

§ 143-510. Emergency Medical Services Advisory Council. — (a) There is hereby created an Emergency Medical Services Advisory Council composed of 21 members to consult with the Secretary of the Department of Human Resources in the administration of this article. The Secretary of the Department of Human Resources shall appoint 17 members with at least one member representing each of the following categories:

(1) Physicians licensed to practice medicine versed in treatment of trauma and suddenly occurring illnesses,
(2) Emergency room nurses,
(3) Hospitals,
(4) Providers of ambulance service (including rescue squads),
(5) Local government, and
(6) The general public.

The Lieutenant Governor shall appoint two members from the Senate, and the Speaker of the House of Representatives shall appoint two members from the House of Representatives.

(b) Members appointed by the Secretary of the Department of Human Resources shall hold office for a term of four years beginning July 1, 1973, and quadrennially thereafter, except the terms of the members first taking office shall expire, as designated at the time of appointment, six at the end of the second year, six at the end of the third year, and five at the end of the fourth year. Members appointed by the Lieutenant Governor and the Speaker shall serve for two years coinciding with the term for which they were elected to the General Assembly. Vacancies shall be filled by the office making the initial appointment and for the remainder of the unexpired term only.

(c) The Council shall meet at least once each quarter and at the call of the Secretary of the Department of Human Resources. The Council shall elect its chairman annually.

(d) Council members who are not members of the General Assembly or State employees or officers shall receive per diem, travel, and subsistence as provided by G.S. 138-5 while engaged in Council business or attending Council meetings. Council members who are members of the General Assembly shall receive travel and subsistence allowances as provided by G.S. 120-3.1. Council members who are State employees or officers shall receive travel and subsistence as provided by G.S. 138-6. (1973, c. 208, s. 4; 1977, c. 509.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 143-511. Powers and duties of the Council. — The Emergency Medical Services Advisory Council shall

(1) Advise the Secretary of the Department of Human Resources on recommendation to the commission or commissions as to designation of multicounty emergency medical services regions,
(2) Give their advice as to all rules and regulations proposed to be adopted by the commission or commissions, and
(3) Advise the Secretary on all other matters pertaining to this Article. (1973, c. 208, s. 5.)

§ 143-512. Regional demonstration plans. — The Secretary of the Department of Human Resources is authorized to develop and implement, in conjunction with such local sponsors as may agree to participate, regional emergency medical services systems in order to demonstrate the desirability of comprehensive regional emergency medical services systems and to determine the optimum characteristics of such plans. The Secretary may make special grants-in-aid to participants. (1973, c. 208, s. 6.)

§ 143-513. Regional emergency medical services councils. — The Secretary of the Department of Human Resources may establish emergency medical services regional councils to implement and coordinate emergency medical services programs within regions. (1973, c. 208, s. 7.)

§ 143-514. Training program; utilization of emergency services personnel. — The Department of Human Resources in cooperation with educational institutions shall develop training programs for emergency medical service personnel. Upon successful completion of such training programs and other programs approved by the Board of Medical Examiners of the State of North Carolina, emergency medical services personnel may, in the course of their emergency medical services duties, perform such acts, tasks and functions as they have been trained to perform and as provided in rules and regulations of such Board, regardless of other provisions of law. (1973, c. 208, s. 8; c. 1121.)

§ 143-515. Establishment of regions. — The Secretary is authorized to establish an appropriate number of multicounty emergency medical services regions. (1973, c. 208, s. 9.)

§ 143-516. Single State agency. — The Department of Human Resources is hereby designated as the single agency for North Carolina for the purposes of all federal emergency medical services legislation as has or may be hereafter enacted to assist in development of emergency medical services plans and programs. (1973, c. 208, s. 10.)

§ 143-517. Ambulance support; free enterprise. — Nothing in this Article affects the power of local governments to finance ambulance operations or to support rescue squads. Nothing in this Article shall be construed to allow infringement on the private practice of medicine or the lawful operation of health care facilities. (1973, c. 208, s. 11.)

§§ 143-518 to 143-520: Reserved for future codification purposes.

ARTICLE 57.

Crime Study Commission.

§ 143-521. Crime Study Commission created. — There is hereby created a commission to be known as the Crime Study Commission for the study of legislation designed to reduce crime in North Carolina, to be composed of nine members who shall be appointed not later than July 1, 1973, for a two-year term as follows: Three members shall be appointed by the Governor, three members shall be appointed by the President of the Senate, and three members shall be appointed by the Speaker of the House. The subsequent appointments shall be for terms to commence on July 1 of the year in which appointed, and each member shall serve until his successor is appointed and qualifies. Appointees shall be members or former members of the North Carolina General Assembly. (1973, c. 801.)

§ 143-522. Duties of Commission. — It shall be the duty of the Commission to pursue an in-depth study of existing and proposed legislation designed to contribute to the public safety by the reduction of crime in North Carolina, giving particular emphasis to:

(1) Collecting and reviewing existing legislation in North Carolina designed to reduce crime; as well as pertinent crime information reports, studies and findings in the field of crime from other states and national bodies.
(2) Collecting and reviewing information on the North Carolina Criminal Justice System including law enforcement, courts, and corrections with a view towards relating them to the concerns and needs of North Carolina in crime reduction.
(3) Studying and coordinating the reports and recommendations of the various agencies, councils, commissions, committees, and associations existing in North Carolina whose primary or partial duties are to make recommendations designed to affect the Criminal Justice System. The Commission shall make specific recommendations towards the goals enumerated in this section. (1973, c. 801.)

§ 143-523. Organization of Commission. — Upon its appointment, the Commission shall organize by electing from its membership a chairman. The Commission shall meet at such times and places as the chairman shall designate. The facilities of the State Legislative Building shall be available to the Commission. On request of the chairman, the Director of the Department of Administration shall make available to the Commission and its staff suitable office space and meeting facilities. The Commission is authorized to conduct hearings and to employ such clerical and other assistance, professional advice and services as may be deemed necessary in the performance of its duties. (1973, c. 801.)

§ 143-524. Members to serve without compensation; subsistence and travel expenses.—Members of the Commission shall serve without compensation but they shall be paid such per diem and travel expenses as are provided for members of State boards and commissions generally pursuant to G.S. 138-5. (1973, c. 801.)

§ 143-525. Assistance to Commission. — The Commission, in the performance of its duties, may request and shall receive from every department, board, bureau, agency, commission, or institution of this State, or from any political subdivision of the State, information, cooperation, and assistance. (1973, c. 801.)

§ 143-526. Reports to General Assembly. — The Commission shall make a report to the General Assembly containing its findings and recommendations not later than February 1, 1974, and annually thereafter. (1973, c. 801.)

§§ 143-527 to 143-531: Reserved for future codification purposes.

ARTICLE 58.

Committee on Inaugural Ceremonies.

§ 143-532. Definitions. — For the purposes of this Article:
(1) The term "inaugural period" means the period which includes the day on which the ceremony inaugurating the Governor is held, the seven calendar days immediately preceding such day, and the seven calendar days immediately subsequent to such day; and
(2) The term "inaugural planning period" means the period beginning July 1 of the year in which the Governor is elected and ending the last day in the inaugural period. (1975, c. 816.)

§ 143-533. Creation, appointment of members; members ex officio. — There is hereby created a Committee on Inaugural Ceremonies to consist of three representatives to be appointed by the Speaker of the House, three senators to be appointed by the President of the Senate, three citizens to be appointed by the Governor, and three citizens to be appointed by the Governor-elect upon certification of his election. Of the three citizens appointed to the Committee by the Governor, only two may be of the same political party. The Speaker of the House, the President of the Senate, the Governor, and, upon certification of their election, all members-elect of the Council of State, shall be ex officio members of the Committee on Inaugural Ceremonies. (1975, c. 816.)

§ 143-534. Time of appointments; terms of office. — Appointments to the Committee on Inaugural Ceremonies shall be made on or before July 1 of years in which there is an election of the Governor. The term of office of the Committee members, the Speaker of the House, the President of the Senate and the Governor who are members ex officio, shall begin on the first day of the inaugural planning period, and shall end on the last day of the inaugural period. The term of office of the members-elect of the Council of State, who are ex officio members of the Committee, shall begin upon certification of their election, and shall end on the last day of the inaugural period. (1975, c. 816.)

§ 143-535. Vacancies. — Vacancies in the appointive membership of the Committee on Inaugural Ceremonies occurring during a term shall be filled for the unexpired term by appointment by the officer who made the original appointment. Vacancies in the ex officio membership shall be filled for the unexpired term by election by the remaining members of the Committee. A legislative vacancy on the Committee shall be filled by a member of the same house in which the vacancy occurred. (1975, c. 816.)

§ 143-536. Chairman; rules of procedure; quorum. — At its first meeting the Committee on Inaugural Ceremonies shall, by majority vote, elect a chairman from within the Committee membership. There shall also be a vice-chairman who shall be designated by the Governor-elect from among his appointees on the Committee who shall assume his duties upon appointment. The chairman, and in his absence the vice-chairman, shall preside over meetings of the Committee. The Committee shall adopt rules of procedure governing its meetings. Six members, excluding ex officio members, shall constitute a quorum of the Committee. (1975, c. 816.)

§ 143-537. Meetings. — The first meeting of the Committee on Inaugural Ceremonies shall be held during the inaugural planning period at the call of the President of the Senate. Thereafter the Committee shall meet at the call of the chairman. (1975, c. 816.)

§ 143-538. Powers and duties. — During the inaugural planning period the Committee on Inaugural Ceremonies shall plan and sponsor official parades, swearing-in ceremonies and other formal occasions connected with the swearing-in and installation of the Governor and other members of the Council of State. Throughout the inaugural planning period the Committee shall consult with and remain in close contact with the Governor-elect and all of the other members-elect of the Council of State upon certification of their election. Balls, dinners, testimonials, parties and other informal occasions shall be coordinated with official events by the Committee; however, nothing in this Article shall preclude any group or person from conducting private events during the inaugural period. (1975, c. 816.)

§ 143-539. Offices; per diem and allowances of members; payments from appropriations. — The facilities of the State Legislative Building shall be made available to the Committee on Inaugural Ceremonies by the Legislative Services

Officer for the Committee's work. The members of the Committee, including ex officio members, shall be paid such per diem, subsistence and travel allowances as are prescribed by law for State boards and commissions generally. All payments for purposes authorized by this Article shall be paid by the State Treasurer upon written authorization of the chairman of the Committee, from funds appropriated to the Contingency and Emergency Budget. (1975, c. 816.)

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143A-171 to 143A-180. [Repealed.]
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ARTICLE 1.

General Provisions.

§ 143A-1. Short title. — This Chapter shall be known and may be cited as the "Executive Organization Act of 1971." (1971, c. 864, s. 1.)

§ 143A-2. Head of department defined. — Whenever the term "head of the department" is used it shall mean the head of one of the principal departments created by this Chapter. (1971, c. 864, s. 1.)

§ 143A-3. Agency defined. — Whenever the term "agency" is used it shall mean and include, as the context may require, an existing department, institution, commission, committee, board, division, bureau, officer or official. (1971, c. 864, s. 1.)

§ 143A-4. Policy-making authority and administrative powers of Governor; delegation. — The Governor, in accordance with Article III of the Constitution of North Carolina, shall be the chief executive officer of the State. Subject to the Constitution and laws of this State, the Governor shall be responsible for formulating and administering the policies of the executive branch of the State government. Where a conflict arises in connection with the administration of the policies of the executive branch of the State government with respect to the reorganization of State government, such conflict shall be resolved by the Governor, and the decision of the Governor shall be final. (1971, c. 864, s. 1.)

§ 143A-5. Office of the Lieutenant Governor. — The Lieutenant Governor shall maintain an office in a State building in the City of Raleigh which office shall be open during normal working hours throughout the year. The Lieutenant Governor shall serve as President of the Senate and perform such additional duties as the Governor or General Assembly may assign to him. This section shall become effective January 1, 1973. (1971, c. 864, s. 1.)

§ 143A-6. Types of transfers. — (a) Under this Chapter, a type I transfer means the transferring of all or part of an existing agency to a principal department established by this Chapter. When all or part of any agency is transferred to a principal department under a type I transfer, its statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, are transferred to the principal department.

When any agency, or part thereof, is transferred by a type I transfer to a principal department under the provisions of this Chapter, all its prescribed powers, duties, and functions, including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications are transferred to the head of the principal department into which the agency, or part thereof, has been transferred.

(b) Under this Chapter, a type II transfer means the transferring intact of an existing agency, or part thereof, to a principal department established by this Chapter. When any agency, or part thereof, is transferred to a principal department under a type II transfer, that agency, or part thereof, shall be administered under the direction and supervision of that principal department, but shall exercise all its prescribed statutory powers independently of the head of the principal department, except that under a type II transfer the management functions of any transferred agency, or part thereof, shall be performed under the direction and supervision of the head of the principal department.

(c) Whenever the term "management functions" is used it shall mean planning, organizing, staffing, directing, coordinating, reporting and budgeting. (1971, c. 864, s. 1.)

Transfer under Type II Transfer of Burial Commission Records and Administrative Personnel to Department of Commerce. — See opinion of Attorney General to Mr. Irvin Aldridge, Secretary, Department of Commerce, 41 N.C.A.G. 921 (1972).

§ 143A-7. Agencies not enumerated; continuation. — Any existing department, institution, board or commission not enumerated in this Chapter but established or created by the General Assembly shall continue to exercise all its powers, duties and functions. (1971, c. 864, s. 1.)

§ 143A-8. Internal organization of departments; allocation and reallocation of duties and functions; limitations. — The Governor shall cause the administrative organization of each department to be examined with a view to promoting economy and efficiency. The Governor may reorganize and organize the principal departments and assign and reassign the duties and functions among the divisions and other units, division heads, officers, and employees; except as otherwise expressly provided by statute. When such changes affect existing law they must be submitted in accordance with Article III, Sec. 5 of the Constitution. The head of a principal department shall have legal custody of all books, papers, documents and other records of the department. The head of a principal department shall be responsible for the preparation and presentation of the department budget request which shall include all funds requested and all receipts expected for all elements of the department. (1971, c. 864, s. 1.)

§ 143A-9. Appointment of officers and employees; salaries of department heads. — Any provisions of law to the contrary notwithstanding, and subject to the provisions of the Constitution of the State of North Carolina, the head of a principal department, except those departments headed by elected officials who are constitutional officers, shall be appointed by the Governor and serve at his pleasure. The salary of the head of each of the principal departments, except in those departments headed by elected officials who are constitutional officers, shall be set by the Advisory Budget Commission on the recommendation of the Governor. Salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly.

The head of a principal department shall appoint the chief deputy or chief assistant and such chief deputy or chief assistant shall be subject to the State Personnel Act. Except where appointment by the Governor is prescribed by existing statute, the head of the principal department shall appoint the administrative head of each transferred agency and, subject to the provisions of the State Personnel Act, appoint all employees of each division, section or other unit under a principal department.

In establishing the position of secretary, and the supporting staff for the principal departments, the cost of such staff positions will be met insofar as possible by utilizing existing positions or funds available from vacant positions within agencies assigned to the principal departments. (1971, c. 864, s. 1.)

Editor's Note. — Section 143-34.3, referred to in the first paragraph, was repealed by Session Laws 1977, c. 802, s. 15.20.

§ 143A-10. Governor; continuation of powers and duties; staff. — All powers, duties and functions vested by law in the Governor or in the office of Governor are continued, except as otherwise provided by this Chapter.

The immediate staff of the Governor shall not be subject to the State Personnel Act; however, salaries for these positions shall be filed with the General Assembly pursuant to G.S. 143-34.3 commencing with the 1973 General Assembly. (1971, c. 864, s. 1.)

Editor's Note. — Section 143-34.3, referred to in the second paragraph, was repealed by Session Laws 1977, c. 802, s. 15.20.

§ 143A-11. Principal departments. — Except as otherwise provided by this Chapter, or the State Constitution, all executive and administrative powers, duties and functions, not including those of the General Assembly and the judiciary, previously vested by law in the several State agencies, are vested in the following principal offices or departments.

(1) Office of the Governor.
(2) Office of the Lieutenant Governor.
(3) Department of the Secretary of State.
(4) Department of State Auditor.
(5) Department of State Treasurer.
(6) Department of Public Education.
(7) Department of Justice.
(8) Department of Agriculture.
(9) Department of Labor.
(10) Department of Insurance.
(11) Department of Administration.
(12) Department of Transportation.
(13) Department of Natural Resources and Community Development.
(14) Repealed by Session Laws 1973, c. 476, s. 6.
(15) Department of Social Rehabilitation and Control.
(16) Department of Commerce.
(17), (18) Repealed by Session Laws 1973, c. 476, s. 6.
(19) Repealed by Session Laws 1973, c. 620, s. 9. (1971, c. 864, s. 1; 1973, c. 476, s. 6; c. 620, s. 9; 1975, c. 716, s. 7; 1977, c. 771, s. 4.)

Cross References. — As to the Department of Cultural Resources, see §§ 143B-49 through 143B-125. As to the Department of Human Resources, see §§ 143B-136 through 143B-216.7. As to the Department of Revenue, see §§ 143B-217 through 143B-225. As to the transfer of the Division of Veterans Affairs of the Department of Military and Veterans Affairs to the Department of Administration, see § 143A-96.1.

Editor's Note. — The 1975 amendment deleted "and Highway Safety" from the end of subdivision (12).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in subdivision (13).

§ 143A-12. Office of the Governor; creation. — There is hereby created an office of the Governor. (1971, c. 864, s. 2.)

§ 143A-13. Office of the Lieutenant Governor; creation. — There is hereby created an office of the Lieutenant Governor. (1971, c. 864, s. 3.)

§ 143A-14. Creation of new departments by executive order. — All departments not now in existence which this Chapter directs to be created shall be made operative by executive order of the Governor; provided that all new departments shall be activated by executive order not later than July 1, 1972. (1971, c. 864, s. 21.)

§ 143A-15. Date of transfer of agencies into existing departments. — The transfer of all agencies into departments of State government which now exist shall take place not later than October 1, 1971. (1971, c. 864, s. 21.)

§ 143A-16. Transfer of funds by Governor. — To implement this Chapter, the Governor shall have authority to transfer all or a part of any appropriations or funds of an agency to the department to which such agency is transferred. (1971, c. 864, s. 21.)

§ 143A-17. Plans and reports. — Each principal department shall submit an annual plan of work to the Governor and the Advisory Budget Commission prior to the beginning of each fiscal year. Each principal department shall submit an annual report covering programs and activities to the Governor and Advisory Budget Commission at the end of each fiscal year. These plans of work and annual reports shall be made available to the General Assembly.

These documents will serve as the base for the development of budgets for each principal department of State government to be submitted to the Governor, Advisory Budget Commission and to the General Assembly for consideration and approval. (1971, c. 864, s. 21.)

§ 143A-18. Additional funds for reorganization. — When adequate funds to implement reorganization are not available from the budgets of the transferred agencies, the Governor and the Council of State may make other funds available for these purposes, not to exceed a total of five hundred thousand dollars ($500,000) per year for all departments created by this Chapter. (1971, c. 864, s. 21.)

ARTICLE 2.

Department of the Secretary of State.

§ 143A-19. Creation. — There is hereby created a Department of the Secretary of State. The head of the Department of the Secretary of State is the Secretary of State. (1971, c. 864, s. 4.)

§ 143A-20. Secretary of State; powers and duties. — The Secretary of State shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 4.)

§ 143A-21. Secretary of State; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Secretary of State are transferred by a type I transfer to the Department of the Secretary of State. (1971, c. 864, s. 4.)

§ 143A-22: Repealed by Session Laws 1973, c. 1409, s. 1.

§ 143A-23. Notaries public; powers, duties and functions; transfer. — All of the powers, duties and functions of the Governor under G.S. 10-1 of the General Statutes are transferred by a type I transfer to the Department of the Secretary of State. (1971, c. 864, s. 4.)

Editor's Note. — The reference in this section to § 10-1 is to § 10-1 as it stood before the revision of Chapter 10 by Session Laws 1973, c. 680.

ARTICLE 3.

Department of State Auditor.

§ 143A-24. Creation. — There is hereby created a Department of State Auditor. The head of the Department of the State Auditor is the State Auditor. (1971, c. 864, s. 5.)

§ 143A-25. State Auditor; powers and duties. — The State Auditor shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 5.)

§ 143A-26. State Auditor; transfer of powers and duties to Department. —Except as otherwise provided in the Constitution or by this Chapter, all powers, duties and functions of the State Auditor are transferred by a type I transfer to the Department of the State Auditor. (1971, c. 864, s. 5.)

§ 143A-27. North Carolina Firemen's Pension Fund; transfer. — The North Carolina Firemen's Pension Fund, as contained in Article 3 of Chapter 118 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Auditor. (1971, c. 864, s. 5.)

§ 143A-28. The Law-Enforcement Officers' Benefit and Retirement Fund; transfer. — The Law-Enforcement Officers' Benefit and Retirement Fund, as contained in Article 12 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Auditor. (1971, c. 864, s. 5.)

§ 143A-29. State Board of Pensions; transfer. — The State Board of Pensions, as contained in Article 2 of Chapter 112 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Auditor. (1971, c. 864, s. 5.)

ARTICLE 4.

Department of State Treasurer.

§ 143A-30. Creation. — There is hereby created a Department of State Treasurer. The head of the Department of State Treasurer is the State Treasurer. (1971, c. 864, s. 6.)

§ 143A-31. State Treasurer; powers and duties. — The State Treasurer shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 6.)

§ 143A-32. State Treasurer; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the State Treasurer are transferred by a type I transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-33. Local Government Commission; transfer. — The Local Government Commission, as contained in Article 1 of Chapter 159 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

Editor's Note. — The Local Government Commission is now provided for in Article 2 of Chapter 159.

§ 143A-34. Teachers' and State Employees' Retirement System; transfer. — The Teachers' and State Employees' Retirement System, and the board of trustees, as contained in Article 1 of Chapter 135 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-35. North Carolina Local Governmental Employees' Retirement System; transfer. — The North Carolina Local Governmental Employees' Retirement System, as contained in Article 3 of Chapter 128 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-36. Public Employees' Social Security Agency; powers, duties and functions; transfer. — All of the powers, duties and functions of the Public Employees' Social Security Agency as contained in Article 2 of Chapter 135 of the General Statutes and the laws of this State, are transferred by a type I transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

§ 143A-37. Legislative Retirement Fund; transfer. — The Legislative Retirement Fund, as provided for in G.S. 120-4.1 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

Editor's Note. — Section 120-4.1, referred to above, was repealed by Session Laws 1973, c. 1482, s. 3. For the conditions of the repeal, see § 120-4.2.

§ 143A-38. Tax Review Board; transfer. — The Tax Review Board, as created by G.S. 105-269.2 of the General Statutes and the laws of this State, is transferred by a type II transfer to the Department of State Treasurer. (1971, c. 864, s. 6.)

ARTICLE 5.

Department of Public Education.

§ 143A-39. Creation. — There is hereby created a Department of Public Education. The head of the Department of Public Education is the State Board of Education. Any provision of G.S. 143A-9 to the contrary notwithstanding, the appointment of the State Board of Education shall be as prescribed in Article IX, Sec. 4(1) of the Constitution. (1971, c. 864, s. 7.)

§ 143A-40. State Board of Education; powers and duties. — The State Board of Education shall have such powers and duties as are conferred on the Board by this Chapter, delegated to the Board by the Governor and conferred by the Constitution and laws of this State. (1971, c. 864, s. 7.)

§ 143A-41. State Board of Education; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the State Board of Education are transferred by a type I transfer to the Department of Public Education. (1971, c. 864, s. 7.)

§ 143A-42. Superintendent of Public Instruction; transfer of office and Department of Public Instruction; powers and duties. — The office of the Superintendent of Public Instruction, as provided for by Article III, Sec. 7, of the Constitution, and the Department of Public Instruction are hereby transferred to the Department of Public Education. The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education, and shall have such powers and duties as are conferred by the Constitution, by the State Board of Education, Chapter 115 of the General Statutes, and the laws of this State. (1971, c. 864, s. 7.)

§ 143A-43. Department of Community Colleges; transfer. — The Department of Community Colleges, as contained in Chapter 115A of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Public Education. (1971, c. 864, s. 7.)

§ 143A-44. North Carolina Vocational Textile School; transfer. — The North Carolina Vocational Textile School, and board of trustees, as contained in Article 6 of Chapter 115A of the General Statutes and the laws of this State, are hereby transferred by a type II transfer to the Department of Public Education. (1971, c. 864, s. 7.)

§ 143A-45. Interstate Compact for Education; rights, duties and privileges. — All of the rights, duties and privileges of this State obtained as a party to the Interstate Compact for Education as contained in Article 43 of Chapter 115 of the General Statutes and the laws of this State, shall be supervised and administered by the Superintendent of Public Instruction. (1971, c. 864, s. 7.)

§ 143A-46. North Carolina Advancement School; transfer. — The North Carolina Advancement School, as contained in Article 44 of Chapter 115 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Public Education. (1971, c. 864, s. 7.)

Editor's Note. — Article 44 of Chapter 115, referred to above, was repealed by Session Laws 1975, 2nd Sess., c. 983, s. 43.

§ 143A-47. Interstate Agreement on Qualifications of Educational Personnel; rights, duties and privileges. — All the rights, duties and privileges of this State obtained as a party to the Interstate Agreement on Qualifications of Educational Personnel as contained in Article 17A of Chapter 115 of the General Statutes and the laws of this State shall be supervised and administered by the Superintendent of Public Instruction. (1971, c. 864, s. 7.)

§ 143A-48. Textbook Commission; transfer. — The Textbook Commission, as created by G.S. 115-206.3 and the laws of this State, is hereby transferred by a type I transfer to the Department of Public Education. (1971, c. 864, s. 7.)

ARTICLE 6.

Department of Justice.

§ 143A-49. Creation. — There is hereby created a Department of Justice. The head of the Department of Justice is the Attorney General. (1971, c. 864, s. 8.)

§ 143A-49.1. Attorney General; powers and duties. — The Attorney General shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 8.)

§ 143A-50. Attorney General; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Attorney General are transferred by a type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ 143A-51. State Bureau of Investigation; transfer. — The State Bureau of Investigation, as contained in Article 4 of Chapter 114 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ 143A-52. Fire investigations; transfer. — The duties of the Commissioner of Insurance with respect to the investigation of all fires, including forest fires, as contained in Article 1 of Chapter 69 of the General Statutes and the laws of this State, are hereby transferred by a type I transfer to the Department of Justice; provided, however, that the duties of the Commissioner of Insurance with respect to the inspection of buildings, the removal of dangerous materials therefrom, hospital insurance, insurance regulation, and the preparation of annual reports, as contained in Chapters 57 and 58 of the General Statutes and G.S. 69-4, shall continue to be among the duties of the Commissioner of Insurance. (1971, c. 864, s. 8; 1977, c. 596, s. 3.)

Editor's Note. — The 1977 amendment deleted "and G.S. 69-6" following "G.S. 69-4" near the end of the section.

§ 143A-53. General Statutes Commission; transfer. — The General Statutes Commission as contained in Article 2 of Chapter 164 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ 143A-54. Company police; powers, duties and functions; transfer. — All of the powers, duties and functions of the Governor contained in Chapter 74A of the General Statutes and the laws of this State relating to the appointment and commission of special police are hereby transferred by a type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

Applied in North Carolina Ass'n of Licensed Detectives v. Morgan, 17 N.C. App. 701, 195 S.E.2d 357 (1973).

§ 143A-55. Police Information Network; transfer. — The Police Information Network, as created by G.S. 114-10.1 and the laws of this State, is hereby transferred by a type I transfer to the Department of Justice. (1971, c. 864, s. 8.)

§ 143A-55.1. North Carolina Criminal Justice Training and Standards Council; transfer. — The North Carolina Criminal Justice Training and Standards Council, as created by Chapter 17A of the General Statutes and laws of this State, is hereby transferred by a type II transfer to the Department of Justice. (1975, c. 372, s. 1.)

ARTICLE 7.

Department of Agriculture.

§ 143A-56. Creation. — There is hereby created a Department of Agriculture. The head of the Department of Agriculture is the Commissioner of Agriculture. (1971, c. 864, s. 9.)

§ 143A-57. Commissioner of Agriculture; powers and duties. — The Commissioner of Agriculture shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 9.)

§ 143A-58. Commissioner of Agriculture; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Commissioner of Agriculture are transferred by a type I transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ 143A-59. Board of Agriculture; transfer. — The Board of Agriculture, as contained in Article 1 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ 143A-60. Structural Pest Control Division; transfer. — The Structural Pest Control Division of the Department of Agriculture, as contained in Article 4C of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ 143A-61. The North Carolina Agricultural Hall of Fame; transfer.—The North Carolina Agricultural Hall of Fame, as contained in Article 50B of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ 143A-62. Gasoline and Oil Inspection Board; transfer. — The Gasoline and Oil Inspection Board, as contained in Article 3 of Chapter 119 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ 143A-63. North Carolina Rural Rehabilitation Corporation; transfer. —The North Carolina Rural Rehabilitation Corporation, and board of directors, as contained in Chapter 137 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ 143A-64. North Carolina Board of Crop Seed Improvement; transfer. — The North Carolina Board of Crop Seed Improvement, as contained in Article 30 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ 143A-65. North Carolina Public Livestock Market Advisory Board; transfer. — The North Carolina Public Livestock Market Advisory Board, as contained in Article 35 of Chapter 106 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

§ 143A-66. State Museum; transfer. — The State Museum of Natural History, as contained in G.S. 106-22 and the laws of this State, and the Museum of Natural History Advisory Commission, as contained in Article 40, Chapter 143 of the General Statutes and the laws of this State, are hereby transferred by a type I transfer to the Department of Agriculture. (1971, c. 864, s. 9.)

ARTICLE 8.

Department of Labor.

§ 143A-67. Creation. — There is hereby created a Department of Labor. The head of the Department of Labor is the Commissioner of Labor. (1971, c. 864, s. 10.)

§ 143A-68. Commissioner of Labor; powers and duties. — The Commissioner of Labor shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 10.)

§ 143A-69. Commissioner of Labor; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested by law in the Commissioner of Labor are transferred by a type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

§ 143A-70. Board of Boiler Rules and Bureau of Boiler Inspection; transfer. — The Board of Boiler Rules and the Bureau of Boiler Inspection, as contained in Article 7 of Chapter 95 of the General Statutes and the laws of this State, are hereby transferred by a type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

§ 143A-71. Apprenticeship Council; transfer. — The Apprenticeship Council, as contained in Chapter 94 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

§ 143A-72. Voluntary arbitration of labor disputes; appointment of arbitrator or panel; Commissioner of Labor; transfer. — All of the powers, duties and functions of the Commissioner of Labor under Article 4A of Chapter 95 of the General Statutes and the laws of this State, are transferred by a type I transfer to the Department of Labor. (1971, c. 864, s. 10.)

ARTICLE 9.

Department of Insurance.

§ 143A-73. Creation. — There is hereby created a Department of Insurance. The head of the Department of Insurance is the Commissioner of Insurance. (1971, c. 864, s. 11.)

§ 143A-74. Commissioner of Insurance; powers and duties. — The Commissioner of Insurance shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred by the Constitution and laws of this State. (1971, c. 864, s. 11.)

§ 143A-75. Commissioner of Insurance; transfer of powers and duties to Department. — Except as otherwise provided in the Constitution or in this Chapter, all powers, duties and functions vested in the Commissioner of Insurance are transferred by a type I transfer to the Department of Insurance. (1971, c. 864, s. 11.)

§ 143A-76. Insurance Advisory Board; transfer. — The Insurance Advisory Board, as contained in Article 2 of Chapter 58 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Insurance. (1971, c. 864, s. 11.)

§ 143A-77. Health Insurance Advisory Board; transfer. — The Health Insurance Advisory Board, as contained in Article 27A of Chapter 58 of the

General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Insurance. (1971, c. 864, s. 11.)

§ 143A-78. Building Code Council; transfer. — The Building Code Council, as contained in Article 9 of Chapter 143 of the General Statutes and the laws of this State, is hereby transferred by a type II transfer to the Department of Insurance. (1971, c. 864, s. 11.)

§ 143A-79. State Volunteer Fire Department; transfer. — The State Volunteer Fire Department, as contained in Article 3 of Chapter 69 of the General Statutes and the laws of this State, is hereby transferred by a type I transfer to the Department of Insurance. (1971, c. 864, s. 11.)

ARTICLE 10

Department of Administration.

§§ 143A-80 to 143A-96: Repealed by Session Laws 1975, c. 879, s. 46.

Cross Reference. — For present provisions as to the Department of Administration, see § 143B-366 et seq.

§ 143A-96.1. Transfer of Department of Veterans Affairs. — The Division of Veterans Affairs of the Department of Military and Veterans Affairs as described in Article 5 of Chapter 143B is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Administration. The Secretary of Administration is hereby empowered and directed to employ within the Department of Administration an additional assistant secretary as Assistant Secretary for Veterans Affairs. (1977, c. 70, s. 26.)

ARTICLE 11.

Department of Transportation and Highway Safety.

§§ 143A-97 to 143A-108: Repealed by Session Laws 1975, c. 716, s. 5.

Cross Reference. — For present provisions as to the Department of Transportation, see § 143B-345 et seq.

ARTICLE 12.

Department of Natural and Economic Resources.

§§ 143A-109 to 143A-129: Repealed by Session Laws 1973, c. 1262, s. 86.

Cross Reference. — For present provisions as to the Department of Natural Resources and Community Development, see § 143B-275 et seq.

ARTICLE 13.

Department of Human Resources.

§§ 143A-130 to 143A-162: Repealed by Session Laws 1973, c. 476, s. 183.

Cross Reference. — For present provisions as to the Department of Human Resources, see §§ 143B-136 through 143B-216.7.

ARTICLE 14.

Department of Social Rehabilitation and Control.

§§ 143A-163 to 143A-170: Repealed by Session Laws 1973, c. 1262, s. 10.

Cross Reference. — As to transfer of the functions of the Department of Social Rehabilitation and Control to the Department of Correction, see § 143B-262.

ARTICLE 15.

Department of Commerce.

§§ 143A-171 to 143A-180: Repealed by Session Laws 1977, c. 198, s. 25.

§§ 143A-180.1, 143A-180.2: Recodified as §§ 143B-448, 143B-449 by Session Laws 1977, c. 198, s. 26.

Cross Reference. — For statute prohibiting master electric and natural gas meters in residential buildings, enacted as § 143A-180.4 by Session Laws 1977, c. 792, s. 9, see § 143-151.42.

§ 143A-181: Recodified as § 143B-439 by Session Laws 1977, c. 198, s. 26.

§§ 143A-182 to 143A-185.1: Repealed by Session Laws 1977, c. 198, s. 25.

ARTICLE 16.

Department of Revenue.

§§ 143A-186 to 143A-190: Repealed by Session Laws 1973, c. 476, s. 193.

Cross Reference. — For present provisions as to the Department of Revenue, see §§ 143B-217 through 143B-225.

ARTICLE 17.

Department of Art, Culture and History.

§§ 143A-191 to 143A-230: Repealed by Session Laws 1973, c. 476, s. 16.

Cross Reference. — As to the Department of Cultural Resources, see §§ 143B-49 through 143B-125.

ARTICLE 18.

Department of Military and Veterans' Affairs.

§§ 143A-231 to 143A-238: Repealed by Session Laws 1973, c. 620, s. 9.

Cross Reference. — As to the transfer of the Division of Veterans Affairs of the Department of Military and Veterans Affairs to the Department of Administration, see § 143A-96.1.

ARTICLE 19.

Transfers to Department of Crime Control and Public Safety.

§ 143A-239. North Carolina national guard. — The North Carolina national guard as provided for in Chapter 127A is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

Editor's Note. — Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 143A-240. North Carolina Civil Preparedness Agency. — The State Civil Preparedness Agency as provided for in Chapter 166 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-241. State Civil Air Patrol. — The State Civil Air Patrol as provided for in G.S. 167-2 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-242. State Highway Patrol. — The State Highway Patrol as provided for in Article 4 of Chapter 20 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-243. State Board of Alcoholic Control Enforcement Division. — The State Board of Alcoholic Control Enforcement Division as provided for in Part 2 of Article 2 of Chapter 18A is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-244. Governor's Crime Commission. — The Governor's Crime Commission as provided for in Part 23 of Article 7 of Chapter 143B and 1977 Session Laws, Chapter 11 is hereby transferred by a Type II transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

§ 143A-245. Crime Control Division. — The Crime Control Division, Department of Natural and Economic Resources, as provided for in Part 23 of Article 7 of Chapter 143B and 1977 Session Laws, Chapter 11 is hereby transferred by a Type I transfer, as defined in G.S. 143A-6, to the Department of Crime Control and Public Safety. (1977, c. 70, s. 1.)

Editor's Note. — Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1977, c. 771, s. 4 which substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Chapter 143B.

Executive Organization Act of 1973.

Article 1.

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Article 2.

Department of Cultural Resources.

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143B-54. Art Commission — creation, powers and duties.
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Sec.
143B-71. Tryon Palace Commission — creation, powers and duties.
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143B-73. U.S.S. North Carolina Battleship Commission — creation, powers and duties.
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143B-79. Executive Mansion Fine Arts Committee — creation, powers and duties.
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Part 11. American Revolution Bicentennial Committee.

143B-81. American Revolution Bicentennial Committee — creation, powers and duties.
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Part 12. North Carolina Awards Committee.

143B-83. North Carolina Awards Committee — creation, powers and duties.
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Part 13. America's Four Hundredth Anniversary Committee.

Sec.
143B-85. America's Four Hundredth Anniversary Committee — creation, powers and duties.
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Part 14. North Carolina Arts Council.

143B-87. North Carolina Arts Council — creation, powers and duties.
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Part 15. North Carolina Art Society, Incorporated.

143B-89. North Carolina Art Society, Incorporated.

Part 16. State Library Committee.

143B-90. State Library Committee — creation, powers and duties.
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Part 17. Roanoke Island Historical Association.

143B-92. Roanoke Island Historical Association — creation, powers and duties.
143B-93. Roanoke Island Historical Association — status.

Part 18. North Carolina Symphony Society.

143B-94. North Carolina Symphony Society, Inc.

Part 19. Edenton Historical Commission.

143B-95. Edenton Historical Commission — creation, powers and duties.
143B-96. Edenton Historical Commission — status.
143B-97. Edenton Historical Commission — reports.
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Part 20. Historic Bath Commission.

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Article 11.

Department of Crime Control and Public Safety.

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ARTICLE 1.

General Provisions.

§ 143B-1. Short title. — This Chapter shall be known and may be cited as the "Executive Organization Act of 1973." (1973, c. 476, s. 1.)

Cross Reference. — As to effect of this Article on Article 8, § 143B-345 et seq., of this Chapter, see § 143B-350.

§ 143B-2. Interim applicability of the Executive Organization Act of 1973. — The Executive Organization Act of 1973 shall be applicable only to the following named departments:

(1) Department of Cultural Resources
(2) Department of Human Resources
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Natural Resources and Community Development
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce. (1973, c. 476, s. 2; c. 620, s. 9; c. 1262, ss. 10, 86; 1975, c. 716, s. 5; c. 879, s. 46; 1977, c. 70, s. 22; c. 198, s. 21; c. 771, s. 4.)

Editor's Note. — The first 1975 amendment added subdivision (7).

The second 1975 amendment added subdivision (8).

The first 1977 amendment substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs" in subdivision (4).

The second 1977 amendment added subdivision (9).

The third 1977 amendment substituted "Department of Natural Resources and Community Development" for "Department of Natural and Economic Resources" in subdivision (6).

Session Laws 1977, c. 70, s. 34, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 143B-3. Definitions. — As used in the Executive Organization Act of 1973, except where the context clearly requires otherwise, the words and expressions defined in this section shall be held to have the meanings here given to them.

(1) Agency: whenever the term "agency" is used it shall mean and include, as the context may require, an existing department, institution, commission, committee, board, division, bureau, officer or official.

(2) Board: a collective body which assists the head of a principal department or his designee in the development of major programs including the tender of advice on departmental priorities.

(3) Commission: a collective body which adopts rules and regulations in a quasi-legislative manner and which acts in a quasi-judicial capacity in rendering findings or decisions involving differing interests.

(4) Committee: a collective body which either advises the head of a principal department or his designee or advises a commission in detailed technical areas.

(5) Council: a collective body which advises the head of a principal department or his designee as representative of citizen advice in specific areas of interests.

(6) Division: the principal subunit of a principal State department.

(7) Head of department: head of one of the principal State departments.

(8) Higher education: State senior institutions of higher learning.

(9) Principal State department: one of the departments created by the General Assembly in compliance with Article III, Sec. 11, of the Constitution of North Carolina. (1973, c. 476, s. 3.)

§ 143B-4. Policy-making authority and administrative powers of Governor; delegation.—The Governor, in accordance with Article III of the Constitution of North Carolina, shall be the Chief Executive Officer of the State. The Governor shall be responsible for formulating and administering the policies of the executive branch of the State government. Where a conflict arises in connection with the administration of the policies of the executive branch of the State government with respect to the reorganization of State government, the conflict shall be resolved by the Governor, and the decision of the Governor shall be final. (1973, c. 476, s. 4.)

§ 143B-5. Governor; continuation of powers and duties. — All powers, duties, and functions vested by law in the Governor or in the Office of Governor are continued except as otherwise provided by the Executive Organization Act of 1973.

The immediate staff of the Governor shall not be subject to the State Personnel Act. (1973, c. 476, s. 5.)

§ 143B-6. Principal departments. — In addition to the principal departments enumerated in the Executive Organization Act of 1971, all executive and administrative powers, duties, and functions not including those of the General Assembly and its agencies, the General Court of Justice and the administrative agencies created pursuant to Article IV of the Constitution of North Carolina, and higher education previously vested by law in the several State agencies, are vested in the following principal departments:

(1) Department of Cultural Resources
(2) Department of Human Resources
(3) Department of Revenue
(4) Department of Crime Control and Public Safety
(5) Department of Correction
(6) Department of Natural Resources and Community Development
(7) Department of Transportation
(8) Department of Administration
(9) Department of Commerce. (1973, c. 476, s. 6; c. 620, s. 9; c. 1262, ss. 10, 86; 1975, c. 716, s. 5; c. 879, s. 46; 1977, c. 70, s. 23; c. 198, s. 22; c. 771, s. 4.)

Editor's Note. — The first 1975 amendment added subdivision (7).

The second 1975 amendment added subdivision (8).

The first 1977 amendment substituted "Department of Crime Control and Public Safety" for "Department of Military and Veterans Affairs" in subdivision (4).

The second 1977 amendment added subdivision (9).

The third 1977 amendment substituted "Department of Natural Resources and Community Development" for "Department of Natural and Economic Resources" in subdivision (6).

Session Laws 1977, c. 70, s. 34, c. 198, s. 31, and c. 771, c. 22, contain severability clauses.

§ 143B-7. Continuation of functions. — Each principal State department shall be considered a continuation of the former agencies to whose power it has succeeded for the purpose of succession to all rights, powers, duties, and obligations of the former agency. Where a former agency is referred to by law, contract, or other document, that reference shall apply to the principal State department now exercising the functions of the former agency. (1973, c. 476, s. 7.)

§ 143B-8. Unassigned functions. — All functions, duties, and responsibilities established by law that are not specifically assigned to any principal State department may be assigned by the Governor to that department which, in accordance with the organization of State government, can most appropriately and effectively perform those functions, duties, and responsibilities. This provision shall not apply to professional and occupational licensing boards or to higher education. (1973, c. 476, s. 8.)

§ 143B-9. Appointment of officers and employees. — The head of each principal State department, except those departments headed by popularly elected officers, shall be appointed by the Governor and serve at his pleasure.

The salary of the head of each of the principal State departments, except in those departments headed by popularly elected officers, shall upon the recommendation of the Governor, be set by the General Assembly; provided, however, that the Governor may with approval of the Advisory Budget Commission increase or decrease the salary of a new appointee by a maximum of twenty percent (20%) over or under the authorized salary of the appointee's immediate predecessor without action of the General Assembly, except that in the case of the Secretary of the Department of Human Resources, when such new appointee is a licensed physician, the salary may be set at a level comparable to that of physicians employed by the department. The salaries of elected officials shall be as prescribed by law.

The head of a principal State department shall appoint a chief deputy or chief assistant, and such chief deputy or chief assistant shall not be subject to the State Personnel Act. The salary of such chief deputy or chief assistant shall, upon the recommendation of the Governor, be set by the General Assembly. Unless otherwise provided for in the Executive Organization Act of 1973, and subject to the provisions of the Personnel Act, the head of each principal State department shall designate the administrative head of each transferred agency and all employees of each division, section, or other unit of the principal State department. (1973, c. 476, s. 9; 1977, c. 802, s. 42.20.)

Editor's Note. — The 1977 amendment added the proviso to the first sentence of the second paragraph.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

The provisions of G.S. 126-5(b) control over the provisions of this section. — See Opinion of the Attorney General to Mr. G.C. Davis, Jr., Director, Position Analysis Division, Office of State Personnel, 46 N.C.A.G. 148 (1976).

§ 143B-10. Powers and duties of heads of principal departments. — (a) Assignment of Functions. — Except as otherwise provided by this Chapter, the head of each principal State department may assign or reassign any function vested in him or in his department to any subordinate officer or employee of his department.

(b) Reorganization by Department Heads. — With the approval of the Governor, each head of a principal State department may establish or abolish within his department any division. Each head of a principal State department may establish or abolish within his department any other administrative unit to achieve economy and efficiency and in accordance with sound administrative principles, practices, and procedures except as otherwise provided by law. When any such act of the head of the principal State department affects existing law the provisions of Article III, Sec. 5(10) of the Constitution of North Carolina shall be followed.

(c) Department Staffs. — The head of each principal State department may establish necessary subordinate positions within his department, make appointments to those positions, and remove persons appointed to those positions, all within the limitations of appropriations and subject to the State Personnel Act. All employees within a principal State department shall be under the supervision, direction, and control of the head of that department. The head of each principal State department may establish or abolish positions, transfer officers and employees between positions, and change the duties, titles, and compensation of existing offices and positions as he deems necessary for the efficient functioning of the department, subject to the State Personnel Act and the limitations of available appropriations. For the purposes of the foregoing provisions, a member of a board, commission, council, committee, or other citizen group shall not be considered an "employee within a principal department."

(d) The head of each principal department may create and appoint committees or councils to consult with and advise the department. The members of any committee or council created by the head of a principal department shall serve at the pleasure of the head of the principal department and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with the provisions of G.S. 138-5, when approved by the Advisory Budget Commission.

(e) Departmental Management Functions. — All management functions of a principal State department shall be performed by or under the direction and supervision of the head of that principal State department. Management functions shall include planning, organizing, staffing, directing, coordinating, reporting, and budgeting.

(f) Custody of Records. — The head of a principal State department shall have legal custody of all books, papers, documents, and other records of the department.

(g) Budget Preparation. — The head of a principal State department shall be responsible for the preparation of and the presentation of the department budget request which shall include all funds requested and all receipts expected for all elements of the department.

(h) Plans and Reports. — Each principal State department shall submit to the Governor an annual plan of work for the next fiscal year prior to the beginning of that fiscal year. Each principal State department shall submit to the Governor an annual report covering programs and activities for each fiscal year. These plans of work and annual reports shall be made available to the General Assembly. These documents will serve as the base for the development of budgets for each principal State department of State government to be submitted to the Governor.

(i) Reports to Governor; Public Hearings. — Each head of a principal State department shall develop and report to the Governor legislative, budgetary, and administrative programs to accomplish comprehensive, long-range coordinated planning and policy formulation in the work of his department. To this end, the head of the department may hold public hearings, consult with and use the services of other State agencies, employ staff and consultants, and appoint advisory and technical committees to assist in the work.

(j) Departmental Regulations. — The head of each principal State department may adopt regulations, consistent with law and with rules established by the Governor and with the rules and regulations of the State Personnel Board, for

(1) The administration of his department;
(2) The conduct of employees of his department;
(3) The distribution and performance of business; and
(4) The custody, use, and preservation of the records, documents, and property pertaining to department business. (1973, c. 476, s. 10; 1973, c. 1416, ss. 1, 2.)

§ 143B-11. Subunit nomenclature. — (a) The principal subunit of a department is a division. Each division shall be headed by a director.

(b) The principal subunit of a division is a section. Each section shall be headed by a chief.

(c) If further subdivision is necessary, sections may be divided into subunits which shall be known as branches and which shall be headed by heads, and branches may be divided into subunits which shall be known as units and which shall be headed by supervisors. (1973, c. 476, s. 11.)

§ 143B-12. Internal organization of departments; allocation and reallocation of duties and functions; limitations. — The Governor shall cause the administrative organization of each department to be examined periodically with a view to promoting economy, efficiency, and effectiveness. The Governor may assign and reassign the duties and functions of the executive branch among the principal State departments except as otherwise expressly provided by statute. When the changes affect existing law, they must be submitted to the General Assembly in accordance with Article III, Sec. 5(10) of the Constitution of North Carolina. (1973, c. 476, s. 12.)

§ 143B-13. Appointment, qualifications, terms, and removal of members of commissions. — (a) Each member of a commission created by or under the authority of the Executive Organization Act of 1973 shall be a resident of the State of North Carolina, unless otherwise specifically authorized by law.

Unless more restrictive qualifications are provided in the Executive Organization Act of 1973, the Governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge, and ability in the field for which appointed, and with a view to providing diversity of interest and points of view in the membership.

The balance of unexpired terms of existing commission members shall be served in accordance with their most recent appointment.

A vacancy occurring during a term of office is filled in the same manner as the original appointment is made and for the balance of the unexpired term, unless otherwise provided by law or by the Constitution of North Carolina.

(b) A commission membership becomes vacant on the happening of any of the following events before the expiration of the term: (i) the death of the incumbent, (ii) his insanity as determined by final judgment or final order of a court of competent jurisdiction, (iii) his resignation, (iv) his removal from office, (v) his ceasing to be a resident of the State, (vi) his ceasing to discharge the duties of his office over a period of three consecutive months except when prevented by sickness, (vii) his conviction of a felony or of any offense involving a violation of his official duties, (viii) his refusal or neglect to take an oath within the time prescribed, (ix) the decision of a court of competent jurisdiction declaring void his appointment, and (x) his commitment to a hospital or sanitarium by a court of competent jurisdiction as a drug addict, a dipsomaniac, an inebriate, or stimulant addict; but in that event, the office shall not be considered vacant until the order of commitment has become final.

(c) No member of any State commission may: (i) use his position to influence any election or the political activity of any person, (ii) serve as a member of the campaign committee of any political party, (iii) interfere with or participate in the preparation for any election or the conduct thereof at the polling place, or (iv) be in any manner concerned with the demanding, soliciting, or receiving of any assessments, subscriptions, or contributions, whether voluntary or involuntary, to any political party or candidate. Any commission member who shall violate any of the provisions of this section shall be subject to dismissal from office by the Governor.

The provisions of this subsection shall not apply to ex officio members of a commission whose membership on a commission is the result of being a member of the Council of State, the General Assembly or other elected office.

(d) In addition to the foregoing, any member of a commission may be removed from office by the Governor for misfeasance, malfeasance, and nonfeasance.

(e) Any appointment by the Governor to a commission, board, council or committee made subsequent to January 5, 1973, and prior to July 1, 1973, for a term that would extend for a period inconsistent with the staggered term provisions of the Executive Organization Act of 1973, may be reduced by the Governor to conform to those staggered term provisions. (1973, c. 476, s. 13; 1975, c. 879, s. 47.)

Editor's Note. — The 1975 amendment added the second paragraph of subsection (c).

§ 143B-14. Administrative services to commissions. — (a) The head of the principal State department to which a commission has been assigned is responsible for the provision of all administrative services to the commission.

(b) Except as otherwise provided in the Executive Organization Act of 1973, the powers, duties, and functions of a commission (including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications) shall not be subject to the approval, review, or control of the head of the department or of the Governor.

(c) The Governor may assign to an appropriate commission created by the Executive Organization Act of 1973 duties of a quasi-legislative and quasi-judicial nature existing in the executive branch of State government which have not been assigned by this Chapter to any other commission. All such assignment of duties by the Governor to a commission shall be made in accordance with Article III, Sec. 5(10) of the Constitution of North Carolina.

(d) All management functions of a commission shall be performed by the head of the principal State department. Management functions shall include planning, organizing, staffing, directing, coordinating, reporting, and budgeting. (1973, c. 476, s. 14; 1973, c. 1416, s. 3.)

§ 143B-15. Compensation of members of commissions. — The salary of members of full-time commissions shall be set by the General Assembly upon recommendation of the Governor to be submitted as a part of his budget requests. (1973, c. 476, s. 15.)

§ 143B-16. Appointment and removal of members of boards, councils, and committees. — Unless more restrictive qualifications are provided in this Chapter, the Governor shall appoint each member of a board, council, or committee on the basis of his interest in public affairs, good judgment, knowledge and ability in the field for which appointed, and with a view to providing diversity of interest and points of view in the membership. Unless other conditions are provided in the Executive Organization Act of 1973, any member of a board, council, or committee may be removed from office by the Governor for misfeasance, malfeasance, or nonfeasance. (1973, c. 476, s. 16.)

§ 143B-17. Commission investigations and orders. — Unless otherwise provided for in the Executive Organization Act of 1973, any commission created by the Executive Organization Act of 1973 may order an investigation into areas of concern over which it has rule-making authority, and the head of the department required to give staff support to such commission shall render such reports and information as the commission may require. In default of the production of information by the head of the principal department or any employee or agent thereof, the commission may seek the aid of the Wake County Superior Court to require the production of information as hereinafter provided.

In proceedings before any commission or any hearing officer or member of the commission so authorized by the commission, if any person refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined or refuses to obey any lawful order of a commission contained in its decision rendered after hearing, the chairman of the commission may apply to the Superior Court of Wake County or to the superior court of the county where the proceedings are being held for an order directing that person to take the requisite action. Should any person willfully fail to comply with an order so issued, the court shall punish him as for contempt. (1973, c. 476, s. 17.)

§ 143B-18. Commission rules and regulations; filing; hearing; copies. — Any rules and regulations adopted by any commission created by the Executive Organization Act of 1973 shall state the effective date and shall be filed as required by law.

A public hearing with at least 10 days' notice advertised in at least three newspapers with general circulation shall be required prior to the adoption of any rules and regulations other than rules and regulations inapplicable to the public at large intended solely as administrative procedures of the commission.

Sufficient copies of adopted rules and regulations shall be made available to interested citizens upon request.

Certified copies of such rules and regulations and amendments thereto shall be received in evidence in all courts and other official proceedings in the State, when in conformity with the Rules of Civil Procedure in Chapter 1A. (1973, c. 476, s. 18.)

§ 143B-19. Pending actions and proceedings. — No action or proceeding pending at the time the Executive Organization Act of 1973 takes effect and brought by or against any State agency whose functions, powers, and duties are transferred by the Executive Organization Act of 1973 to a principal State department shall be affected by any provision of the Executive Organization Act of 1973, but the same may be prosecuted or defended in the name of the head of the principal State department. In all such actions and proceedings, the principal State department to which the functions, powers, and duties of a State agency have been transferred shall be substituted as a party upon appropriate application to the courts. (1973, c. 476, s. 19.)

§ 143B-20. Continuation of rules, regulations, and decisions. — All rules, regulations, acts, determinations, and decisions of any State agency and commissioners and directors thereof pertaining to the functions transferred and assigned by the Executive Organization Act of 1973 to a principal State department or commission and in force at the time of such transfer or assignment shall continue in force and effect as rules, regulations, acts, determinations, and decisions of the principal State department concerned until such time as they may be modified or repealed by the principal State department or commission. (1973, c. 476, s. 20.)

§ 143B-21. Affirmation of prior acts of abolished agencies. — The abolition of certain agencies by the Executive Organization Act of 1973 should not be construed as invalidating any lawful prior act of such agency. (1973, c. 476, s. 21.)

§ 143B-22. Terms occurring in laws, contracts, and other documents. — Any reference or designation in any statute, contract, or other document pertaining to functions, powers, obligations, and duties of a State agency assigned by the Executive Organization Act of 1973 to a principal State department shall be deemed to refer to the principal State department or the head of the principal State department, as may be appropriate. (1973, c. 476, s. 22.)

§ 143B-23. Completion of unfinished business. — Any business or other matter undertaken or commenced by any State agency or the commissioners or directors thereof, pertaining to or connected with the functions, powers, obligations, and duties hereby transferred to a principal State department, and pending on July 1, 1973, may be conducted and completed by the principal State department in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the State agency or commissioners and directors thereof. (1973, c. 476, s. 23.)

§ 143B-24. Cooperative agreements. — Except as otherwise provided by law, each principal State department may, with the approval of the Department of Administration, enter into cooperative agreements with the federal government, any state government, any agency of the State government, any local government of the State, jointly with any two or more, or severally, in carrying out its functions. (1973, c. 476, s. 24.)

§ 143B-25. Agencies not enumerated. — Any agency not enumerated in the Executive Organization Act of 1973 but established or created by the General Assembly shall continue to exercise all its powers, duties, and functions subject to the provisions of Chapter 143A of the General Statutes of the State of North Carolina. (1973, c. 476, s. 25.)

§ 143B-26. Constitutional references. — All references to the Constitution of North Carolina in the Executive Organization Act of 1973 refer to the Constitution of North Carolina as effective July 1, 1973. (1973, c. 476, s. 26.)

§ 143B-27. Transfer of funds by Governor. — To implement the Executive Organization Act of 1973, the Governor with the approval of the Advisory Budget Commission shall have the authority to transfer all or a part of any appropriations or funds of an agency to the department to which such agency is transferred. (1973, c. 476, s. 27.)

§ 143B-28. Goals of continuing reorganization. — Structural reorganization of State government should be a continuing process, accomplished through careful executive and legislative appraisal of the placement of proposed new programs and coordination of existing programs in response to changing emphases in public needs and should be consistent with the following goals:

(1) The organization of State government should assure its responsiveness to popular control. It is the goal of reorganization to improve the administrative capability of the executive to carry out these policies.

(2) The organization of State government should aid communication between citizens and government. It is the goal of reorganization through coordination of related programs in function-oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(3) The organization of State government should assure efficient and effective administration of the policies established by the General Assembly. It is the goal of reorganization to promote efficiency and effectiveness by improving the management and coordination of State services and by eliminating ineffective, overstaffed, obsolete or overlapping activities. (1973, c. 476, s. 28.)

§§ 143B-29 to 143B-48: Reserved for future codification purposes.

ARTICLE 2.

Department of Cultural Resources.

Part 1. General Provisions.

§ 143B-49. Department of Cultural Resources — creation, powers and duties. — There is hereby created a department to be known as the "Department of Cultural Resources," with the organization, duties, functions, and powers defined in the Executive Organization Act of 1973. (1973, c. 476, s. 29.)

§ 143B-50. Duties of the Department. — It shall be the duty of the Department to provide the necessary management, development of policy and establishment and enforcement of standards for the furtherance of resources, services and programs involving the arts and the historical and cultural aspects of the lives of the citizens of North Carolina. (1973, c. 476, s. 30.)

§ 143B-51. Functions of the Department. — (a) The functions of the Department of Cultural Resources shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all executive functions of the State in relation to the development and preservation of libraries, historical records, sites and property, and of an appreciation of art and music and further including those prescribed powers, duties, and functions enumerated in Article 17 of Chapter 143A of the General Statutes of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 17 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Cultural Resources except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

(1) The Secretary and Department of Art, Culture and History;
(2) The State Department of Archives and History;
(3) The North Carolina Advisory Council on Historic Preservation;
(4) The North Carolina State Library;
(5) The Interstate Library Compact;
(6) The North Carolina Museum of Art;
(7) The North Carolina State Art Society, Inc.;
(8) The North Carolina Symphony Society, Inc.;
(9) The State Art Museum Building Commission;
(10) The Library Certification Board;
(11) The Tryon Palace Commission;
(12) The North Carolina Arts Council;
(13) The U.S.S. North Carolina Battleship Commission;
(14) The Memorials Commission;
(15) The Commission to Promote Plans for the Celebration of the Four Hundredth Anniversary of the Landing of Sir Walter Raleigh's Colony on Roanoke Island;
(16) The Executive Mansion Fine Arts Commission;
(17) The North Carolina American Revolution Bicentennial Commission;
(18) The North Carolina Awards Commission;
(19) The Tobacco Museum Board;
(20) The Roanoke Island Historical Association, Inc.;
(21) The Sir Walter Raleigh Memorial Commission;
(22) The Governor Richard Caswell Memorial Commission;
(23) The Historic Swansboro Commission;
(24) The Edenton Historical Commission;
(25) The Historic Bath Commission;
(26) The Historic Hillsborough Commission;
(27) The John Motley Morehead Memorial Commission;
(28) The Historic Murfreesboro Commission;
(29) The Charles B. Aycock Memorial Commission;
(30) The Frying Pan Lightship Marine Museum Commission;
(31) The Guilford County Bicentennial Commission;
(32) The Daniel Boone Memorial Commission;
(33) The Bennett Place Memorial Commission;
(34) The Durham-Orange Historical Commission;
(35) The Pitt County Historical Commission;
(36) The Transylvania County Historical Commission;
(37) The Lenoir County Historical and Patriotic Commission;
(38) The Raleigh Historic Sites Commission; and
(39) The Stonewall Jackson Memorial Fund. (1973, c. 476, s. 31.)

Cross Reference. — As to allotments from the Contingency and Emergency Fund of the State to outdoor historical dramas, see § 143-204.8.

Editor's Note. — Article 17 of Chapter 143A was repealed by Session Laws 1973, c. 476, which enacted this Chapter.

§ 143B-52. Head of the Department. — The Secretary of Cultural Resources shall be the head of the Department. (1973, c. 476, s. 32.)

§ 143B-53. Organization of the Department. — The Department of Cultural Resources shall be organized initially to include the Art Commission, the Art Museum Building Commission, the North Carolina Historical Commission, the Tryon Palace Commission, the U.S.S. North Carolina Battleship Commission, the Sir Walter Raleigh Commission, the Executive Mansion Fine Arts Committee, the American Revolution Bicentennial Committee, the North Carolina Awards Committee, the America's Four Hundredth Anniversary Committee, the North Carolina Arts Council, the Public Librarian Certification Commission, the State Library Committee, the North Carolina Symphony Society, Inc., the North Carolina Art Society, and the Division of the State Library, the Division of Archives and History, the Division of the Arts, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1973, c. 476, s. 33.)

Part 2. Art Commission.

§ 143B-54. Art Commission — creation, powers and duties. — There is hereby created the Art Commission of the Department of Cultural Resources with the power and duty to promulgate rules and regulations concerning the acquisition and disposal of art objects for the State of North Carolina and with the power and duty to adopt, amend, and rescind rules and regulations under, and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

(1) The Art Commission shall have the following powers and duties:

a. In consultation with the Secretary of Cultural Resources, on behalf of and in the name of the North Carolina Museum of Art, to acquire by purchase, gift or will, absolutely or in trust, from individuals, corporations, the federal government, or from any other source, money or other property which may be retained, sold, or otherwise used to promote the purposes of the North Carolina Museum of Art as provided by G.S. 140-2;

b. In consultation with the Secretary of Cultural Resources to exchange works of art owned by the North Carolina Museum of Art for other works of art which, in the opinion of the Commission, would improve the quality, value, or representative character of the art collection of the Museum as provided by G.S. 140-2;

c. In consultation with the Secretary of Cultural Resources to sell any work of art owned by the North Carolina Museum of Art as provided by G.S. 140-2;

d. To approve prior to acceptance any gift of artistic value given to the State as provided in Chapter 100 of the General Statutes of North Carolina;

e. To advise the Secretary concerning the inspection, appraisal, obtaining attributions and evaluations of, transporting, exhibiting, lending, storing, receiving upon consignment or as loans, statuary, paintings, and other works of art of any and every kind and description which are worthy of acquisition, preservation, and exhibition by the North Carolina Museum of Art; and

f. To advise the Secretary on the care, custody, storage and preservation of all works of art acquired by the North Carolina Museum of Art, or received by it upon consignment or loan.

(2) The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations heretofore adopted by the Board of Trustees of the State Art Museum, the Memorials Commission, and the Executive Mansion Fine Arts Commission shall remain in full force and effect unless and until repealed or superseded by action of the Art Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 34.)

§ 143B-55. Art Commission — members; selection; quorum; compensation. — The Art Commission of the Department of Cultural Resources shall consist of 11 members appointed by the Governor, four of whom shall be appointed upon the nomination of the State Art Society. Two of the members, whether appointed by the Governor or upon nomination of the State Art Society shall be members of the art or design faculty at a North Carolina college or university. The initial members of the Commission shall include the four members of the Art Museum Board of Trustees whose terms on the Art Museum Board of Trustees expire July 1, 1976, and who shall serve for a period equal to the remainder of their current terms on the Art Museum Board of Trustees. Of the four nominated by the North Carolina Art Society, two shall be appointed for an initial term of one year and two shall be for an initial term of five years. Of the three appointed by the Governor, two shall be appointed for initial terms of one year and one shall be for an initial term of five years. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 35.)

§ 143B-56. Art Commission — officers. — The Art Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 36.)

§ 143B-57. Art Commission — regular and special meetings. — The Art Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 476, s. 37.)

Part 3. Art Museum Building Commission

§ 143B-58. Art Museum Building Commission — creation, powers and duties. — There is hereby recreated the Art Museum Building Commission of the Department of Cultural Resources and the State Art Museum Building Commission shall have the following powers and duties:

(1) With the approval of the Governor and Council of State and the North Carolina State Capital Planning Commission to determine the site for the building of the State Art Museum in accordance with directions, if any, from the General Assembly.

(2) To employ architects to prepare plans for the State Art Museum Building, to assist and advise the architects in the preparation of those plans, and to approve on behalf of the State all plans for the State Art Museum Building.

(3) To enter on behalf of the State into contracts for the construction of an art museum building and the employment of consultants and for the

purchase of services, materials, furnishings, and equipment required in connection with the location, design, construction, furnishing, and equipping of said museum building.

(4) To supervise generally the location, construction, furnishing, equipping, renovating and care of the State Art Museum Building.

(5) To call upon the Department of Administration, the Attorney General, and any other State agency or officer for such assistance as the Commission may require in carrying out its duties.

(6) To appoint such advisory committees, composed of persons not members of the Commission, as the Commission deems necessary.

(7) To report to the General Assembly at each regular session concerning action taken by the Commission during the previous biennium in carrying out the provisions of this Article, and to make such special reports as may be requested by the General Assembly or the Governor.

(8) To receive gifts of funds from foundations, corporations and individuals and to receive public funds to aid in defraying the cost of said building and surrounding facilities including landscaping. (1973, c. 476, s. 39.)

Commission Included within Executive Budget Act. — There is nothing in the Executive Budget Act on this section which indicates a legislative intent to exempt the Art Museum Building Commission from the requirements of the Executive Budget Act. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

And also within § 129-42.1. — Since the Art Museum Building Commission proposes to construct a museum at the present site of the Polk Prison, which is within the environs of the City of Raleigh, the Commission is among the State agencies included within § 129-42.1. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

But This Section Controls. — If the Art Museum Building Commission is brought within Chapter 129, Article 7, there is an obvious conflict between § 129-42 conferring upon the Authority the power to select and employ architects and other consultants and this section conferring that power upon the Commission, but this section, being the specific statute, controls. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

Approval of Subsequent Governors and Councils Not Required. — There is nothing in subdivision (1) to suggest that, having obtained the approval of the Governor and Council of State then in office, the Commission must continue to seek and obtain the approval of each succeeding Governor and Council of State taking office prior to the completion of the museum building. Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 143B-59. Art Museum Building Commission — members; selection; quorum; compensation. — The Art Museum Building Commission of the Department of Cultural Resources shall consist of 15 members with nine appointed by the Governor, three persons who have served in the State Senate to be appointed by the President of the Senate, and three persons who have served in the House of Representatives to be appointed by the Speaker of the House of Representatives. The initial members of the Commission shall be the members of the existing Art Museum Building Commission who shall serve until the completion of the duties assigned to the Commission. Each vacancy occurring in the membership shall be filled by appointment of the officer authorized to make the initial appointment to the place vacated, and each appointee to fill a vacancy shall have the same qualifications prescribed by this Article for the appointee whom he succeeds.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provision of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 40.)

§ 143B-60. Art Museum Building Commission — officers. — The Governor shall appoint one member of the Commission to serve as chairman. (1973, c. 476, s. 41.)

§ 143B-61. Art Museum Building Commission — regular and special meetings. — The Art Museum Building Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least eight members. (1973, c. 476, s. 42.)

Part 4. North Carolina Historical Commission.

§ 143B-62. North Carolina Historical Commission — creation, powers and duties. — There is hereby created the North Carolina Historical Commission of the Department of Cultural Resources to give advice and assistance to the Secretary of Cultural Resources and to promulgate rules and regulations to be followed in the acquisition, disposition, preservation, and use of records, artifacts, real and personal property, and other materials and properties of historical, archaeological, architectural, or other cultural value, and in the extension of State aid to other agencies, counties, municipalities, organizations, and individuals in the interest of historic preservation.

(1) The Historical Commission shall have the following powers and duties:
  a. To advise the Secretary of Cultural Resources on the scholarly editing, writing, and publication of historical materials to be issued under the name of the Department;
  b. To evaluate and approve proposed nominations of historic, archaeological, architectural, or cultural properties for entry on the National Register of Historic Places;
  c. To evaluate and approve the State plan for historic preservation as provided for in Chapter 121;
  d. To evaluate and approve historic, archaeological, architectural, or cultural properties proposed to be acquired and administered by the State;
  e. To evaluate and prepare a report on its findings and recommendations concerning any property not owned by the State for which State aid or appropriations are requested, and to submit its findings and recommendations in accordance with Chapter 121;
  f. To serve as an advisory and coordinative mechanism in and by which State undertakings of every kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and where possible, resolved, particularly by evaluating and making recommendations concerning any State undertaking which may affect a property that has been entered on the National Register of Historic Places as provided for in Chapter 121 of the General Statutes of North Carolina;
  g. To exercise any other powers granted to the Commission by provisions of Chapter 121 of the General Statutes of North Carolina;
  h. To give its professional advice and assistance to the Secretary of Cultural Resources on any matter which the Secretary may refer to it in the performance of the Department's duties and responsibilities provided for in Chapter 121 of the General Statutes of North Carolina;

i. To serve as a search committee to seek out, interview, and recommend to the Secretary of Cultural Resources one or more experienced and professionally trained historian(s) for the position of Director of the Division of Archives and History when a vacancy occurs, and to assist and cooperate with the Secretary in periodic reviews of the performance of the Director and the Division; and

j. To assist and advise the Secretary of Cultural Resources and the Director of the Division of Archives and History in the development and implementation of plans and priorities for the State's historical programs.

(2) The Historical Commission shall have the power and duty to establish standards and provide rules and regulations as follows:

a. For the acquisition and use of historical materials suitable for acceptance in the North Carolina State Archives or the North Carolina Museum of History;

b. For the disposition of public records under provisions of Chapter 121 of the General Statutes of North Carolina; and

c. For the certification of records in the North Carolina State Archives as provided in Chapter 121 of the General Statutes of North Carolina;

d. For the use by the public of historic, architectural, archaeological, or cultural properties as provided in Chapter 121 of the General Statutes of North Carolina;

e. For the acquisition of historic, archaeological, architectural, or cultural properties by the State;

f. For the extension of State aid or appropriations to counties, municipalities, organizations, or individuals for the purpose of historic preservation or restoration; and

g. For qualification for grants-in-aid or other assistance from the federal government for historic preservation or restoration as provided in Chapter 121 of the General Statutes of North Carolina. This section shall be construed liberally in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this section. All current rules and regulations heretofore adopted by the Executive Board of the State Department of Archives and History, the Historic Sites Advisory Committee, the North Carolina Advisory Council on Historical Preservation, the Executive Mansion Fine Arts Commission, and the Memorials Commission shall remain in full force and effect unless and until repealed or superseded by action of the Historical Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 44; 1977, c. 513, s. 2.)

Editor's Note. — The 1977 amendment added paragraphs i and j of subdivision (1).

§ 143B-63. Historical Commission — members; selection; quorum; compensation. — The Historical Commission of the Department of Cultural Resources shall consist of 11 members appointed by the Governor.

The members of the North Carolina Historical Commission shall include the members of the existing North Carolina Historical Commission who shall serve for a period equal to the remainder of their current terms on the Commission, plus four additional appointees of the Governor, two of whose appointments shall expire March 31, 1979, and two of whose appointments shall expire March 31, 1981. At the end of the respective terms of office of the members, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Of the members, at least five shall have professional training or experience in the fields of archives, history, historic preservation, historic architecture, archaeology, or museum administration, including at least three currently involved in the teaching of history at the college or university level or in administering archives or historical collections or programs. Any appointment to fill a vacancy on the Commission created by resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 45; 1977, c. 513, s. 1.)

Editor's Note. — The 1977 amendment substituted "11" for "seven" in the first paragraph and rewrote the second paragraph.

§ 143B-64. Historical Commission — officers. — The Historical Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 46.)

§ 143B-65. Historical Commission — regular and special meetings. — The Historical Commission shall meet at least twice per year and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1973, c. 476, s. 42.)

Part 5. Archaeological Advisory Committee.

§ 143B-66. Archaeological Advisory Committee — members; selection; compensation; terms; removal; vacancies. — For the purposes of reviewing existing statutes relating to archaeological resources, of making recommendations to the General Assembly concerning programs and statutes, and of advising the Department on the development of its archaeological program, there is hereby created an Archaeological Advisory Committee to be composed of the following members: two members who are citizens of North Carolina and interested in the archaeology of the State appointed by the Governor, one member of the Senate appointed by the President of the Senate; one member of the House of Representatives appointed by the Speaker of the House; two members representing the American Indians of North Carolina, one appointed by the Tribal Council of the Eastern Band of the Cherokee, and one appointed by the Executive Director of the North Carolina State Commission of Indian Affairs; and one archaeologist appointed by the North Carolina Archaeological Advisory Council; and the Secretary of Cultural Resources or his designee as an ex officio member. Members of the Committee shall serve without salary, but their actual expenses resulting from the performance of their official duties shall be reimbursed in accordance with State policy. Members shall be appointed for staggered four-year terms beginning July 1 of odd-numbered years and shall serve until their successors are appointed and qualified. The present members of the Archaeological Advisory Committee shall serve the remainder of their terms, which will expire June 30, 1975. To create and maintain staggered terms, one at-large member appointed by the Governor, the member appointed by the President of the Senate, and the member appointed by the Tribal Council of the Eastern Band of the Cherokee shall be appointed for a term of two years to expire June 30, 1977, at which time their successors shall be appointed pursuant to this section for four-year terms. The remaining Committee members shall be appointed for four-year terms to expire June 30, 1979. The chairman shall be designated by the Governor from among the members of the Committee and shall serve until the expiration of his regularly appointed term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

An appointment to fill a vacancy on the Committee shall be made, according to the procedures for appointment for regular terms, pursuant to this section. Any appointment to fill a vacancy on the Committee for any reason shall be for the balance of the unexpired term. (1973, c. 596; 1975, c. 585, ss. 1, 2.)

Editor's Note. — The 1975 amendment deleted "the State Historian as chairman and" following "to be composed of" near the middle of the first sentence of the first paragraph, inserted "two members who are citizens of North Carolina and interested in the archaeology of the State appointed by the Governor" in that sentence, inserted "and the Secretary of Cultural Resources or his designee as an ex officio member" at the end of that sentence, substituted "staggered four-year terms" for "two-year terms" in the third sentence of that paragraph, substituted the present fourth through seventh sentences of that paragraph for a provision which read: "Initial appointment shall be made immediately upon ratification for terms to expire June 30, 1975" and added the second and third paragraphs.

Part 6. Public Librarian Certification Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-67. Public Librarian Certification Commission — creation, powers and duties. — There is hereby created the Public Librarian Certification Commission of the Department of Cultural Resources with the power and duty to adopt rules and regulations to be followed in the certification of public librarians.

The Commission shall adopt such rules and regulations consistent with the provisions of this Chapter. All rules and regulations consistent with the provisions of this Chapter heretofore adopted by the Library Certification Board shall remain in full force and effect unless and until repealed or superseded by action of the Public Librarian Certification Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 49.)

§ 143B-68. Public Librarian Certification Commission — members; selection; quorum; compensation. — The Public Librarian Certification

Commission of the Department of Cultural Resources shall consist of five members as follows: (i) the chairman of the North Carolina Association of Library Trustees, (ii) the chairman of the public libraries section of the North Carolina Library Association, (iii) an individual named by the Governor upon the nomination of the North Carolina Library Association, (iv) the dean of a State or regionally accredited graduate school of librarianship in North Carolina appointed by the Governor and (v) one member at large appointed by the Governor.

The members shall serve four-year terms or while holding the appropriate chairmanships. Any appointment to fill a vacancy created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem, and necessary travel expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department through the regular staff of the Department. (1973, c. 476, s. 50.)

§ 143B-69. Public Librarian Certification Commission — officers. — The Public Librarian Certification Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 51.)

§ 143B-70. Public Librarian Certification Commission — regular and special meetings. — The Public Librarian Certification Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least three members. (1973, c. 476, s. 52.)

Part 7. Tryon Palace Commission.

§ 143B-71. Tryon Palace Commission — creation, powers and duties. — There is hereby created the Tryon Palace Commission of the Department of Cultural Resources with the power and duty to adopt, amend and rescind rules and regulations concerning the restoration and maintenance of the Tryon Palace complex, and such other powers and duties as provided in Article 2 of Chapter 121 of the General Statutes of North Carolina. (1973, c. 476, s. 54.)

§ 143B-72. Tryon Palace Commission — members; selection; quorum; compensation. — The Tryon Palace Commission of the Department of Cultural Resources shall consist of 25 members appointed by the Governor and in addition to the members who are appointed by the Governor, the Attorney General, the Secretary of Natural Resources and Community Development or his designee, the mayor of the City of New Bern, and the chairman of the Board of Commissioners of Craven County shall serve as ex officio members of said Commission. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the Tryon Palace Commission.

A majority of the members of the Commission shall constitute a quorum for the transaction of business.

The members of the Commission shall serve without pay and without expense allowance. (1973, c. 476, s. 55; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first paragraph.

Part 8. U.S.S. North Carolina Battleship Commission.

§ 143B-73. U.S.S. North Carolina Battleship Commission — creation, powers and duties. — There is hereby created the U.S.S. North Carolina Battleship Commission of the Department of Cultural Resources with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of this State necessary in carrying out the provisions and purposes of this Part.

(1) The U.S.S. North Carolina Battleship Commission is authorized and empowered to adopt such rules and regulations not inconsistent with the management responsibilities of the Secretary of the Department provided by Chapter 143A of the General Statutes and laws of this State and this Chapter that may be necessary and desirable for the operation and maintenance of the U.S.S. North Carolina as a permanent memorial and exhibit commemorating the heroic participation of the men and women of North Carolina in the prosecution and victory of the Second World War and for the faithful performance and fulfillment of its duties and obligations.

(2) The U.S.S. North Carolina Battleship Commission shall have the power and duty to establish standards and adopt rules and regulations: (i) establishing and providing for a proper charge for admission to the ship; and (ii) for the maintenance and operation of the ship as a permanent memorial and exhibit.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. (1973, c. 476, s. 57; 1977, c. 741, s. 3.)

Editor's Note. — The 1977 amendment substituted "Part" for "Article" at the end of the introductory paragraph, substituted the language beginning "commemorating the heroic participation of" for "as provided in Article 39 of Chapter 143 of the General Statutes of North Carolina" at the end of subdivision (1) and deleted "and Article 39 of Chapter 143 of the General Statutes of North Carolina" at the end of subdivision (3).

§ 143B-73.1. U.S.S. North Carolina Battleship Commission — duties. — The Commission shall have the further duty and authority to select an appropriate site for the permanent berthing of the Battleship U.S.S. North Carolina, taking into consideration factors including, but not limited to, the accessibility, location in relation to roads and highways, scenic attraction, protection from hazards of weather, fire and sea, cost of site and berthing, cooperation of local governmental authorities in securing, equipping, and maintaining appropriate areas surrounding the site, and others which may affect the suitability of such site for establishment of the ship as a permanent memorial and exhibit; to accept gifts, grants, and donations for the purposes of this Article; to transport to, and berth the ship at the site; to ready the ship for visitation by the public; to establish and provide for a proper charge for admission to the ship, and for safekeeping of funds; to maintain and operate the ship as a permanent memorial and exhibit; to acquire property, both real and personal, with the approval of the Governor and the Council of State, and to accept donations of property, both real and personal, from any source; to establish, supervise, manage and maintain in New Hanover County with the approval and assistance of the Department of Cultural Resources exhibits, dramas, cultural activities, museums, and records pertaining to the marine and naval history of the State of North Carolina and the United States of America; to identify, preserve and protect properties having historical, marine and naval significance to New Hanover County, the State, its communities and counties and the nation; to establish and provide for a proper charge for admission to all properties maintained and operated by the Commission in New Hanover County; to otherwise provide in carrying out its duties for the establishment of appropriate activities to encourage interest in the marine and naval history of North Carolina; to perpetuate the memory of North Carolinians who gave their lives in the course of World War II and in the events in which the battleship was a participant, and to allocate funds for the fulfillment of the duties and authority herein provided as may be necessary and appropriate for the purpose of this Article. (1961, c. 158; 1977, c. 741, ss. 1, 8.)

Editor's Note. — The above section was formerly § 143-366. It was amended and recodified as § 143B-73.1 by Session Laws 1977, c. 741. The amendment inserted "further" near the beginning of the section and inserted the language beginning "to acquire property" and ending "the battleship was a participant."

Session Laws 1977, c. 741, s. 9, contains a severability clause.

§ 143B-74. U.S.S. North Carolina Battleship Commission — members; selection; quorum; compensation. — The U.S.S. North Carolina Battleship Commission of the Department of Cultural Resources shall consist of 18 members including the Secretary of Cultural Resources and the Secretary of Commerce who shall serve as voting ex officio members. The initial members of the Commission shall be the appointed members of the current Battleship Commission who shall serve for a period equal to the remainder of their current terms on the Battleship Commission. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the U.S.S. North Carolina Battleship Commission.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business. The Governor shall designate from among the members of the Commission a chairman, vice-chairman and treasurer. The Secretary of Cultural Resources or his designee shall serve as Secretary of the Commission. The Commission shall meet at least twice annually upon the call of the chairman, the Secretary of Cultural Resources, or any seven members of the Commission. (1973, c. 476, s. 58; 1977, c. 741, s. 4.)

Editor's Note. — The 1977 amendment substituted "18" for "not more than 15," "Secretary of Cultural Resources and the Secretary of Commerce" for "Secretary of Natural and Economic Resources" and "voting ex officio members" for "an ex officio member" in the first sentence of the first paragraph and added the second, third and fourth sentences of the last paragraph.

Session Laws 1977, c. 741, s. 9, contains a severability clause.

§ 143B-74.1. U.S.S. North Carolina Battleship Commission — funds. — The Commission shall establish and maintain a "Battleship Fund" composed of the moneys which may come into its hands from admission or inspection fees, gifts, donations, grants, or bequests, which funds will be used by the Commission to pay all costs of maintaining and operating the ship for the purposes herein set forth. The Commission shall maintain books of accounting records concerning revenue derived and all expenses incurred in maintaining and operating the ship as a public memorial; such records and books shall be available for audit at any time by the State Auditor of North Carolina, and shall be annually audited by him in the same manner as audits are made of other State agencies and departments. The Commission shall establish a reserve fund in an amount to be determined by the Secretary of Cultural Resources to be maintained and used for contingencies and emergencies beyond those occurring in the course of routine maintenance and operation, and may authorize the deposit of this reserve fund in a depository to be selected by the Treasurer of North Carolina. (1961, c. 158; 1977, c. 741, ss. 2, 8.)

Editor's Note. — The above section was formerly § 143-367. It was amended and recodified as § 143B-74.1 by Session Laws 1977, c. 741. The amendment inserted "in an amount to be determined by the Secretary of Cultural Resources" in the last sentence.

Session Laws 1977, c. 741, s. 9, contains a severability clause.

§ 143B-74.2. U.S.S. North Carolina Battleship Commission — employees. — The Department of Cultural Resources is hereby authorized to hire laborers, artisans, caretakers, stenographic and administrative employees, and other personnel, in accordance with the provisions of the State Personnel Act, as may be necessary in carrying out the purposes and provisions of this Article, and to maintain the ship in a clean, neat, and attractive condition satisfactory for exhibition to the public. Employees shall be residents of the State of North Carolina except as may, in emergency conditions, be necessary for the procurement of specially trained or specially skilled employees. Any materials used for any purpose in maintaining and operating the ship for the purposes of this Article shall be, insofar as practicable, North Carolina materials. (1961, c. 158; 1975, c. 879, s. 46; 1977, c. 741, ss. 6, 8.)

Editor's Note. — The 1975 amendment substituted "Department of Administration" for "Purchase and Contract Division" near the middle of the last sentence of the section.

This section was formerly § 143-368. It was amended and recodified as § 143B-74.2 by Session Laws 1977, c. 741. The amendment substituted "Department of Cultural Resources" for "Commission" near the beginning of the first sentence and deleted the former last sentence, relating to utilization of the services of the Department of Administration for the procurement of materials and supplies.

Session Laws 1977, c. 741, s. 9, contains a severability clause.

§ 143B-74.3. U.S.S. North Carolina Battleship Commission — employees not to have interest. — It shall be unlawful for any member of the Commission to charge, receive, or obtain, directly or indirectly, any fee, commission, retainer or brokerage other than established salaries to be fixed by the Commission, and no member of the Commission shall have any interest in any land, materials, commissions or contracts sold to or made with the Commission, or with any member thereof. Violation of any provisions of this section shall be a misdemeanor and upon conviction shall be punishable by removal from membership or employment and by a fine of not less than one hundred dollars ($100.00) or by imprisonment not to exceed six months or both, in the discretion of the court. (1961, c. 158; 1977, c. 741, ss. 7, 8.)

Editor's Note. — This section was formerly § 143-369. It was amended and recodified as § 143B-74.3 by Session Laws 1977, c. 741. The amendment deleted "or for any employee thereof" preceding "to charge" near the beginning of the first sentence and "or employee thereof" preceding "shall have any interest" and "or employee" preceding "thereof" near the end of the first sentence.

Session Laws 1977, c. 741, s. 9, contains a severability clause.

Part 9. Sir Walter Raleigh Commission.

§ 143B-75. Sir Walter Raleigh Commission — creation, powers and duties. — There is hereby created the Sir Walter Raleigh Commission of the Department of Cultural Resources.

(1) The Sir Walter Raleigh Commission shall have the following powers and duties:

a. To solicit, collect, and turn over to the Secretary of Cultural Resources voluntary donations from the people of North Carolina, including the school children of the State, for the purpose of acquiring, executing and erecting in the City of Raleigh a memorial to Sir Walter Raleigh;

b. To determine the form and characteristics of such memorial and to advise and assist the Secretary of Cultural Resources in the selection of an appropriate person or persons to execute said memorial;

c. To advise the Secretary on the expenditure of such funds as may not be required for the acquisition, execution, and erection of said memorial to the end that such funds may be used in a manner appropriate to the memorializing of Sir Walter Raleigh, including publications and observances; and

d. To advise the Superintendent of Public Instruction on the designation of a Sir Walter Raleigh Day in the public schools of the State and on the appropriate observances thereof.

(2) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for historical memorial purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Sir Walter Raleigh Memorial Commission shall remain in full force and effect unless and until repealed or superseded by action of the Sir Walter Raleigh Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Cultural Resources. (1973, c. 476, s. 60.)

§ 143B-76. Sir Walter Raleigh Commission — members; selection; quorum; compensation. — The Sir Walter Raleigh Commission of the Department of Cultural Resources shall consist of 21 members appointed by the Governor.

Of the initial members of the Commission seven shall be appointed for a six-year term, seven appointed for a four-year term and seven appointed for a two-year term. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the Sir Walter Raleigh Commission.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive neither pay, per diem, nor necessary travel and subsistence expenses.

A majority of the Commission shall constitute a quorum for the transaction of business. (1973, c. 476, s. 61.)

§ 143B-77. Sir Walter Raleigh Commission — officers. — The Sir Walter Raleigh Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 62.)

§ 143B-78. Sir Walter Raleigh Commission — regular and special meetings. — The Sir Walter Raleigh Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least 11 members. (1973, c. 476, s. 63.)

Part 10. Executive Mansion Fine Arts Committee.

§ 143B-79. Executive Mansion Fine Arts Committee — creation, powers and duties. — There is hereby created the Executive Mansion Fine Arts Committee. The Executive Mansion Fine Arts Committee shall have the following functions and duties:

(1) To advise the Secretary of Cultural Resources on the preservation and maintenance of the Executive Mansion located at 200 North Blount Street, Raleigh, North Carolina;

(2) To encourage gifts and objects of art, furniture and articles of historical value for furnishing the Executive Mansion, and advise the Secretary of Cultural Resources on major changes in the furnishings of the Mansion;

(3) To make recommendations to the Secretary of Cultural Resources concerning major renovations necessary to preserve and maintain the structure;

(4) To aid the Secretary of Cultural Resources in keeping a complete list of all gifts and articles received together with their history and value;

(5) No gifts or articles shall be accepted for the Executive Mansion without the approval of the Art Commission or the Historical Commission; and

(6) The Committee shall advise the Secretary of Cultural Resources upon any matter the Secretary may refer to it. (1973, c. 476, s. 65.)

§ 143B-80. Executive Mansion Fine Arts Committee — members; selection; quorum; compensation. — The Executive Mansion Fine Arts Committee shall consist of 16 members appointed by the Governor. The initial members of the Committee shall be the appointed members of the present Executive Mansion Fine Arts Commission who shall serve for a period equal to the remainder of their current terms on the Executive Mansion Fine Arts Commission, four of whose appointments expire June 30, 1973, four of whose appointments expire June 30, 1974, four of whose appointments expire June 30, 1975, and four of whose appointments expire June 30, 1976. At the end of the respective terms of office of the initial members, the appointments of their successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 66.)

Part 11. American Revolution Bicentennial Committee.

§ 143B-81. American Revolution Bicentennial Committee — creation, powers and duties. — There is hereby created the North Carolina American Revolution Bicentennial Committee. The North Carolina American Revolution Bicentennial Committee shall have the following functions and duties:

(1) To advise the Secretary of Cultural Resources concerning plans and programs for the observance of the bicentennial of the American Revolution and to advise the Secretary on the conduct of such programs or series of observations; and

(2) To advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 476, s. 68.)

§ 143B-82. American Revolution Bicentennial Committee — members; selection; quorum; compensation. — The American Revolution Bicentennial Committee of the Department of Cultural Resources shall consist of 25 members, 22 of whom shall be appointed by the Governor and the following three ex officio members: the Secretary of Natural Resources and Community Development or designee, the Superintendent of Public Instruction or designee, and the State Regent of the D.A.R. Of the 22 members appointed by the Governor, nine shall be members of North Carolina college and university history faculties. The initial members of the American Revolution Bicentennial Committee shall include the members of the American Revolution Bicentennial Commission for the balance of their existing terms, two of whose appointments expire March 21, 1973, two of whose appointments expire March 21, 1974, two of whose appointments expire March 21, 1975, two of whose appointments expire March 21, 1976, and two of whose appointments expire March 21, 1977. To maintain the staggered terms the Governor shall appoint three of the additional members for five-year terms, three for four-year terms, two for three-year terms, two for two-year terms, and two for one-year terms. At the end of the respective terms of office of the initial members of the Committee, their successors shall be appointed for terms of five years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

The members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

The Secretary of Cultural Resources is hereby authorized to request contingency and emergency funds for the administration of the American Revolution Bicentennial Committee, for the period between July 1, 1973, and ratification of the next general appropriations bill for the Department.

All clerical and other services required by the Committee shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 69; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph.

Part 12. North Carolina Awards Committee.

§ 143B-83. North Carolina Awards Committee — creation, powers and duties. — There is hereby created the North Carolina Awards Committee with the duty to advise the Secretary of Cultural Resources on the formulation and administration of the program governing North Carolina awards and on the selection of a committee in each award area to choose the recipients.

The Committee shall advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 476, s. 71.)

§ 143B-84. North Carolina Awards Committee — members; selection; quorum; compensation. — The North Carolina Awards Committee shall consist of five members appointed by the Governor to serve at the Governor's pleasure.

The Governor shall designate a member of the Committee as chairman to serve in such capacity at the pleasure of the Governor.

Members of the Committee shall serve without compensation or travel or per diem.

A majority of the Committee shall constitute a quorum for the transaction of business.

The Secretary of Cultural Resources is hereby authorized to request contingency and emergency funds for the administration of the North Carolina Awards Committee, for the period between July 1, 1973, and ratification of the next general appropriations bill for the Department.

All clerical and other services required by the Committee shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 72.)

Part 13. America's Four Hundredth Anniversary Committee.

§ 143B-85. America's Four Hundredth Anniversary Committee — creation, powers and duties. — There is hereby created the America's Four Hundredth Anniversary Committee of the Department of Cultural Resources. The Committee shall have the following functions and duties:

(1) To advise the Secretary of the Department on the planning, conducting, and directing appropriate observances of, and on providing necessary physical facilities and other requirements for, the commemoration of the landing of Sir Walter Raleigh's colony on Roanoke Island; and

(2) To advise the Secretary of the Department upon any matter the Secretary might refer to it. (1973, c. 476, s. 74.)

§ 143B-86. America's Four Hundredth Anniversary Committee — members; selection; quorum; compensation. — The America's Four Hundredth Anniversary Committee shall consist of 14 members as follows: 10 members at large appointed by the Governor and four ex officio members as follows: the mayor of the Town of Manteo, the Secretary of Natural Resources and

Community Development, the chairman of the Roanoke Island Historical Association, and the chairman of the Dare County Board of Commissioners, or their designees. Of the initial members of the America's Four Hundredth Anniversary Committee appointed by the Governor five shall be appointed for terms expiring June 30, 1975, and five for terms expiring June 30, 1977. At the end of their respective terms of office, the appointments shall be for a term of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business. (1973, c. 476, s. 75; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph.

Part 14. North Carolina Arts Council.

§ 143B-87. North Carolina Arts Council — creation, powers and duties. —There is hereby created the North Carolina Arts Council with the following duties and functions:

(1) To advise the Secretary of Cultural Resources on the study, collection, maintenance and dissemination of factual data and pertinent information relative to the arts;

(2) To advise the Secretary concerning assistance to local organizations and the community at large in the area of the arts;

(3) To advise the Secretary on the exchange of information, promotion of programs and stimulation of joint endeavor between public and nonpublic organizations;

(4) To identify research needs in the arts area and to encourage such research;

(5) To advise the Secretary in regard to bringing the highest obtainable quality in the arts to the State and promoting the maximum opportunity for the people to experience and enjoy those arts; and

(6) To advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 476, s. 77.)

§ 143B-88. North Carolina Arts Council — members; selection; quorum; compensation. — The North Carolina Arts Council shall consist of 24 members appointed by the Governor. The initial members of the Council shall be the appointed members of the present Arts Council who shall serve for a period equal to the remainder of their current terms on the Arts Council, eight of whose terms expire June 30, 1973, eight of whose terms expire June 30, 1974, and eight of whose terms expire June 30, 1975. At the end of the respective terms of office of the initial members, the appointments of their successors shall be for terms of three years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council as chairman to serve at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 78.)

Part 15. North Carolina Art Society, Incorporated.

§ 143B-89. North Carolina Art Society, Incorporated. — The North Carolina Art Society, Incorporated, shall continue to be under the patronage of the State as provided in Article 3 of Chapter 140 of the General Statutes of North Carolina. The governing body of the North Carolina Art Society, Incorporated, shall be a board of directors consisting of a minimum of 22 members as follows: the Governor, the Superintendent of Public Instruction, the State Treasurer, and the Director of the North Carolina Museum of Art, who shall be ex officio members; six members who shall be named by the Governor; and a minimum of 12 directors who shall be chosen by members of the North Carolina Art Society, Incorporated, in such manner and for such terms as that body shall determine. The six directors named by the Governor shall serve for terms of three years each. (1973, c. 476, s. 80; 1975, c. 386; 1977, c. 702, s. 3.)

Editor's Note. — The 1975 amendment substituted "16 members" for "15 members" near the beginning of the second sentence.

The 1977 amendment combined the former second and third sentences by substituting the language beginning "of a minimum of 22 members as follows" and ending "a minimum of 12 directors who" for "16 members, of whom the Governor of this State, the Superintendent of Public Instruction, the Treasurer of the State of North Carolina, and the chairman of the art committee of the North Carolina Federation of the Woman's Club shall be ex officio members, and four others shall be named by the Governor of the State" at the end of the former second sentence and for "The remaining eight directors" at the beginning of the former third sentence, and substituted "six directors" for "four directors" and "three years" for "four years" in the present third sentence.

Part 16. State Library Committee.

§ 143B-90. State Library Committee — creation, powers and duties. — There is hereby created the State Library Committee of the Department of Cultural Resources. The State Library Committee shall have the following functions and duties:

(1) To advise the Secretary of the Department on matters relating to the operation and services of the State Library;

(2) To suggest programs to the Secretary of the Department to aid in the development of libraries statewide; and

(3) To advise the Secretary of Cultural Resources upon any matter the Secretary might refer to it. (1973, c. 476, s. 82.)

§ 143B-91. State Library Committee — members; selection; quorum; compensation. — The State Library Committee shall consist of seven members and shall be composed as follows: six members appointed by the Governor, and the duly elected and installed President of the North Carolina Library Association.

The initial members of the Committee shall be the current President of the North Carolina Library Association and the appointed members of the Library board of trustees who shall serve for a period equal to the remainder of their current terms on the Library board of trustees, two of whose appointments expire July 1, 1973; two of whose appointments expire July 1, 1975; and two of whose appointments expire July 1, 1977. At the end of the respective terms of office of the initial members, the appointments of all appointed members shall be for terms of six years and until their successors are appointed and qualify except in the case of the President of the North Carolina Library Association who shall be replaced biennially by his successor in office. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Cultural Resources. (1973, c. 476, s. 83.)

Part 17. Roanoke Island Historical Association.

§ 143B-92. Roanoke Island Historical Association — creation, powers and duties. — There is hereby recreated the Roanoke Island Historical Association with the powers and duties delineated in Article 19 of Chapter 143 of the General Statutes of North Carolina. (1973, c. 476, s. 85.)

§ 143B-93. Roanoke Island Historical Association — status. — The Roanoke Island Historical Association is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-92 and G.S. 143B-93. (1973, c. 476, s. 86.)

Part 18. North Carolina Symphony Society.

§ 143B-94. North Carolina Symphony Society, Inc. — The North Carolina Symphony Society, Incorporated, shall continue to be under the patronage of the State as provided in Article 2 of Chapter 140 of the General Statutes of North Carolina. The governing body of the North Carolina Symphony Society, Incorporated, shall be a board of trustees consisting of not less than 16 members of which the Governor of the State and the Superintendent of Public Instruction shall be ex officio members and four other members shall be named by the Governor. The remaining trustees shall be chosen by members of the North Carolina Symphony Society, Incorporated, in such manner and for such terms as that body shall determine. The initial members named by the Governor shall be appointed from the members of the existing board of trustees of the North Carolina State Symphony Society, Incorporated, for the balance of their existing terms. Subsequent appointments shall be made for terms of four years each. (1973, c. 476, s. 88.)

Part 19. Edenton Historical Commission.

§ 143B-95. Edenton Historical Commission — creation, powers and duties. — There is hereby recreated the Edenton Historical Commission. The Edenton Historical Commission shall have the following powers:

(1) To acquire and dispose of title to or interests in historic properties in the Town of Edenton and County of Chowan and to repair, restore, or otherwise improve such properties, and to maintain them;

(2) To cooperate with, assist, and advise the Secretary of Cultural Resources upon any matters pertaining to the administration of any state-owned historic property or properties in Edenton which the Secretary of the Department may refer to it; and

(3) To carry out other programs reasonably related to these purposes. (1973, c. 476, s. 90.)

§ 143B-96. Edenton Historical Commission — status. — The Edenton Historical Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-95 through G.S. 143B-98. (1973, c. 476, s. 91.)

§ 143B-97. Edenton Historical Commission — reports. — The Edenton Historical Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 92.)

§ 143B-98. Edenton Historical Commission — members; selection; quorum; compensation. — The Edenton Historical Commission shall consist of not fewer than 25 members appointed by the Governor plus, ex officio, the mayor of the Town of Edenton, the Chairman of the Board of Commissioners of Chowan County, and the Secretary of Cultural Resources or designee.

The initial members of the Commission shall be the members of the present Edenton Historical Commission and shall serve at the pleasure of the Governor. Members of the Commission shall elect their own officers and members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 93.)

Part 20. Historic Bath Commission.

§ 143B-99. Historic Bath Commission — creation, powers and duties. — There is hereby created the Historic Bath Commission. The Historic Bath Commission shall have the following powers:

(1) To acquire and dispose of title to or interests in historic properties in and near the Town of Bath in Beaufort County, and to repair, restore, or otherwise improve such properties, and to maintain them;

(2) To offer such historic properties to the State of North Carolina, subject to the acceptance of such properties by the State;

(3) To cooperate with, assist, and advise the Secretary of Cultural Resources upon any matter pertaining to the administration of Bath State Historic Site, which the Secretary of the Department may refer to it; and

(4) To carry out other programs reasonably related to these purposes. (1973, c. 476, s. 95.)

§ 143B-100. Historic Bath Commission — status. — The Historic Bath Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-99 through G.S. 143B-102. (1973, c. 476, s. 96.)

§ 143B-101. Historic Bath Commission — reports. — The Historic Bath Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural Resources is authorized to recommend the abolition of the Commission to the next General Assembly. (1973, c. 476, s. 97.)

§ 143B-102. Historic Bath Commission — members; selection; quorum; compensation. — The Historic Bath Commission shall consist of 25 members appointed by the Governor plus, ex officio, the mayor of the Town of Bath, the Chairman of the Board of Commissioners of Beaufort County, and the Secretary of Cultural Resources or designee. The initial members of the Commission shall be the members of the present Historic Bath Commission who shall serve for a period equal to the remainder of their current terms on the Historic Bath Commission. At the end of the respective terms of office of the initial members of the Commission, the appointments of their successors, with the exception of the ex officio members, shall be for terms of five years and until their successors are appointed and qualify. Any appointments to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 98.)

Part 21. Historic Hillsborough Commission.

§ 143B-103. Historic Hillsborough Commission — creation, powers and duties. — There is hereby recreated the Historic Hillsborough Commission. The Historic Hillsborough Commission shall have the following powers:

(1) In cooperation with the Hillsborough Historical Society, the elected officials of Hillsborough and Orange County, and appropriate public agencies, to use every legal aid and method to preserve and restore the Town of Hillsborough, and its immediately adjacent area, as a living, functioning, educational, and historical exhibit of North Carolina's early life and times;

(2) To acquire and to dispose of property, real and personal; to repair, restore, or otherwise improve such properties; to have prepared a history of the town and area; and to write, compile, publish, or sponsor such historical works as may pertain to the town and area; and

(3) To carry on other programs reasonably related to these purposes. (1973, c. 476, s. 100.)

§ 143B-104. Historic Hillsborough Commission — status. — The Historic Hillsborough Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-103 through G.S. 143B-106. (1973, c. 476, s. 101.)

§ 143B-105. Historic Hillsborough Commission — reports. — The Historic Hillsborough Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 102.)

§ 143B-106. Historic Hillsborough Commission — members; selection; quorum; compensation. — The Historic Hillsborough Commission shall consist of not fewer than 25 members appointed by the Governor plus, ex officio, the mayor of the Town of Hillsborough, the Chairman of the Board of Commissioners of Orange County, the Orange County Register of Deeds, the Orange County Clerk of Superior Court, and the Secretary of Cultural Resources or designee. The initial appointed members of the Commission shall be the members of the present Historic Hillsborough Commission who shall serve for a period equal to the remainder of their current terms on the Historic Hillsborough Commission. At the end of the respective terms of office of the present members, the appointments of members, excepting the ex officio members, shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 103.)

Part 22. Historic Murfreesboro Commission.

§ 143B-107. Historic Murfreesboro Commission — creation, powers and duties. — There is hereby recreated the Historic Murfreesboro Commission. The Historic Murfreesboro Commission shall have the following powers:

(1) To acquire and dispose of title to or interests in historic properties in and near the Town of Murfreesboro, and to repair, restore, or otherwise improve and maintain such properties;

(2) To conduct research and planning to carry out a program for the preservation of historic sites, buildings, or objects in and near the Town of Murfreesboro;

(3) To carry out other programs reasonably related to these purposes. (1973, c. 476, s. 105.)

§ 143B-108. Historic Murfreesboro Commission — status. — The Historic Murfreesboro Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-107 through G.S. 143B-110. (1973, c. 476, s. 106.)

§ 143B-109. Historic Murfreesboro Commission — reports. — The Historic Murfreesboro Commission shall submit an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant, to the Secretary of Cultural Resources. In the event such annual report is not received by the Secretary, or if such report does not indicate the need for the continuation of the Commission, the Secretary of Cultural

Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 107.)

§ 143B-110. Historic Murfreesboro Commission — members; selection; quorum; compensation. — The Historic Murfreesboro Commission shall consist of 30 members appointed by the Governor plus, ex officio, the mayor of the Town of Murfreesboro, the Chairman of the Board of Commissioners of the County of Hertford, the President of Chowan College, and the Secretary of Cultural Resources or designee. The initial appointed members of the Commission shall be the members of the present Historic Murfreesboro Commission who shall serve for a period equal to the remainder of their current terms on the Historic Murfreesboro Commission. At the end of the respective terms of office of the initial members of the Commission, the appointments of their successors, with the exception of ex officio members, shall be for terms of five years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 108.)

Part 23. John Motley Morehead Memorial Commission.

§ 143B-111. John Motley Morehead Memorial Commission — creation, powers and duties. — There is hereby recreated the John Motley Morehead Memorial Commission. The John Motley Morehead Memorial Commission shall have the following powers:

(1) To acquire title to or interests in property, both real and personal, and to solicit, collect, and expend funds for the acquisition, restoration, maintenance, and operation of a memorial to John Motley Morehead in the City of Greensboro; and to carry on other activities, including research and publications, reasonably related to this purpose;

(2) To convey, lease, mortgage, and otherwise dispose of real and personal property and interests therein, as well as to accept deeds, bills of sale, and other instruments conveying and investing title in it; and

(3) To offer such memorial to the State of North Carolina, which memorial, if accepted by the Department of Cultural Resources and Council of State, may be administered as a State historic site subject to existing covenants and agreements. (1973, c. 476, s. 110.)

§ 143B-112. John Motley Morehead Memorial Commission — status. — The John Motley Morehead Memorial Commission is hereby declared not to be a State agency within the meaning of the Executive Organization Act of 1973 and shall be exempt from all provisions of the Executive Organization Act of 1973 except G.S. 143B-111 through G.S. 143B-115. (1973, c. 476, s. 111.)

§ 143B-113. John Motley Morehead Memorial Commission — authorization for counties to assist. — The special approval of the General Assembly is hereby given to all appropriations of surplus or non-ad-valorem tax funds that should be made and paid over to said Commission by all counties and municipalities and the same are declared to be for a public purpose and the special approval of the General Assembly is given for such appropriations. Upon the request of the Commission hereby created, the governing body of Guilford County or of the City of Greensboro may, in its discretion, make appropriations from non-ad-valorem tax revenues to the Commission. (1973, c. 476, s. 112.)

§ 143B-114. John Motley Morehead Memorial Commission — reports. — The John Motley Morehead Commission shall submit to the Secretary of Cultural Resources an annual report of its activities, holdings, and finances, including an audit of its accounts by a certified public accountant. In the event such annual report is not received by the Secretary, or if the report indicates that there is no further need for the Commission, the Secretary of Cultural Resources is authorized to recommend to the next General Assembly the abolition of the Commission. (1973, c. 476, s. 113.)

§ 143B-115. John Motley Morehead Memorial Commission — members; selection; quorum; compensation. — The John Motley Morehead Memorial Commission shall consist of 19 members as follows: nine members appointed by the Governor; three members appointed by the Board of Commissioners of Guilford County; three members appointed by the City Council of Greensboro; and four ex officio members, as follows: the Secretary of Natural Resources and Community Development or designee, the Superintendent of Public Instruction or designee, the State Treasurer or designee and the Secretary of Cultural Resources or designee. The initial members of the Commission shall be the members of the present John Motley Morehead Memorial Commission who shall serve for a period equal to the remainder of their current terms on the John Motley Morehead Memorial Commission. At the end of the respective terms of office of the initial members, the appointments of their successors, with the exception of the ex officio members, shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The Commission shall elect its own officers. Members of the Commission shall serve without pay and without expense allowance from State funds. The Commission shall determine its requirements for a quorum. (1973, c. 476, s. 114; 1977, c. 711, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence.

§§ 143B-116 to 143B-120: Reserved for future codification purposes.

Part 24. Grassroots Arts Program.

§ 143B-121. Program established. — The Department of Cultural Resources shall establish a program to be known as the Grassroots Arts Program, by which funds shall be distributed among the counties of this State for the purpose of assisting the counties in the development of community arts programs. The Grassroots Arts Program shall be established within the "Community Art Development Section" (North Carolina Arts Council) of the Division of the Arts. (1977, c. 1008, s. 1.)

§ 143B-122. Distribution of funds. — Funds available under the Grassroots Arts Program shall be distributed among the counties on a per capita basis. (1977, c. 1008, s. 2.)

§ 143B-123. Rules and procedures; standards for qualification for funds. — The Department of Cultural Resources shall be authorized to adopt rules and procedures necessary to implement this program and shall adopt standards which must be met by organizations within the counties in order to qualify for funds under the Grassroots Arts Program. The standards adopted shall include, but not be limited to the following:

(1) The organization must show that it exists primarily to aid the arts and that it aids the arts in all its forms including the performing, visual and literary.
(2) The organization must show that its programs are open to the entire community.
(3) The organization must show that it is a nonprofit, tax-exempt corporation, governed by a citizen board which is not self-perpetuating, and that it has been in existence and active for at least one full year.
(4) The organization must show that it can match funds available under the Grassroots Arts Program with public or private funds from within the county in which it is located at a ratio of one-to-one. (1977, c. 1008, s. 3.)

§ 143B-124. Designation of organization as official distributing agent; duties. — Guided by the standards set out in G.S. 143B-123, the board of county commissioners of each county shall designate to the Department of Cultural Resources an organization to serve as its distributing agent for Grassroots Arts Program funds. Upon the approval of the Department of Cultural Resources, the designated organization shall become the official distributing agent for that county and shall remain so until such time as it no longer meets the necessary standards. To receive its per capita funds, the official distributing agent must annually submit to the Department of Cultural Resources for its approval a plan for the expenditure of the funds allotted to that county and must account for the funds after they have been expended. Funds may be used for programming, administrative and operating expenses, and should assist in the total development of the arts within that county. (1977, c. 1008, s. 4.)

§ 143B-125. Disposition of funds for counties without organizations meeting Department standards. — Funds for counties without organizations which meet the necessary standards set by the Department of Cultural Resources shall be retained by the department and used for arts programming within these counties. Where feasible, the department shall maintain the same per capita rate for the distribution of funds to these counties and shall require the same matching ratio. No State funds appropriated for the programs set forth in this Part shall be used to pay for personnel positions. (1977, c. 1008, s. 5.)

ARTICLE 3.

Department of Human Resources.

Part 1. General Provisions.

§ 143B-136. Department of Human Resources — creation. — There is hereby recreated and reconstituted a department to be known as the "Department of Human Resources," with the organization, duties, functions, and powers defined in the Executive Organization Act of 1973. (1973, c. 476, s. 117.)

§ 143B-137. Department of Human Resources — duties. — It shall be the duty of the Department to provide the necessary management, development of policy, and establishment and enforcement of standards for the provision of services in the fields of general and mental health and rehabilitation with the basic goal being to assist all citizens — as individuals, families, and communities — to achieve and maintain an adequate level of health, social and economic well-being, and dignity. Whenever possible the department shall emphasize preventive measures to avoid or to reduce the need for costly emergency treatments that often result from lack of forethought. Therefore, it shall be the policy of this department to establish priorities to eliminate those excessive expenses incurred by the State for lack of adequate funding or careful planning of preventive measures. (1973, c. 476, s. 118; 1977, c. 923, s. 2.)

Editor's Note. — The 1977 amendment added the second sentence.

Applied in Tripp v. Flaherty, 27 N.C. App. 180, 218 S.E.2d 709 (1975).

§ 143B-138. Department of Human Resources — functions. — (a) The functions of the Department of Human Resources shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all executive functions of the State in relation to general and mental health and health rehabilitation and further including those prescribed powers, duties, and functions enumerated in Article 13 of Chapter 143A of the General Statutes of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 13 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Human Resources, except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

(1) The State Board of Health,
(2) The Salt Marsh Mosquito Advisory Commission,
(3) The Office of Chief Medical Examiner,
(4) The State Department of Social Services,
(5) The State Board of Social Services,
(6) The Advisory Committee for Medical Assistance,
(7) The State Department of Mental Health,
(8) The State Board of Mental Health,
(9) The Medical Advisory Council to the State Board of Mental Health,
(10) The Mental Health Council,
(11) The Advisory Council on Alcoholism to the North Carolina Board of Mental Health,
(12) The State Advisory Council to the North Carolina Medical Care Commission,
(13) The North Carolina State Commission for the Blind,
(14) The Blind Advisory Committee, Professional Advisory Committee,
(15) The Vocational Rehabilitation Division,
(16) The Eugenics Board of North Carolina,
(17) The Governor Morehead School,
(18) The North Carolina School for the Deaf, the Eastern North Carolina School for the Deaf,
(19) The North Carolina Orthopedic Hospital,
(20) The North Carolina Cerebral Palsy Hospital,
(21) The North Carolina Sanatoriums for the Treatment of Tuberculosis,
(22) The Interstate Compact on Mental Health,
(23) The Council on Mental Retardation and Developmental Disabilities,
(24) The North Carolina Cancer Study Commission,
(25) The Interstate Compact on Juveniles,
(26) The North Carolina Board of Anatomy,
(27) The Governor's Coordinating Council on Aging,
(28) The Confederate Women's Home,
(29) The Medical Care Commission,
(30) The Governor's Committee on Employment of the Handicapped, and
(31) The Human Resources Division. (1973, c. 476, s. 119.)

Editor's Note. — Article 13 of Chapter 143A was repealed by Session Laws 1973, c. 476, which enacted this Chapter.

§ 143B-139. Department of Human Resources — head. — The Secretary of Human Resources shall be the head of the Department. (1973, c. 476, s. 120.)

§ 143B-139.1. Department of Human Resources — head — to establish rules and regulations applicable to local human resource agencies. — The Secretary of the Department of Human Resources is authorized to establish rules and regulations applicable to local human resource agencies for the purpose of program evaluation, fiscal audits, and collection of third-party payments. (1975, c. 875, s. 45.)

§ 143B-139.2. Department of Human Resources — head — requests for grants-in-aid from non-State agencies. — It is the intent of this General Assembly that non-State health and welfare agencies submit their appropriation requests for grants-in-aid through the Secretary of the Department of Human Resources for recommendations to the Governor and the Advisory Budget Commission and the General Assembly, and that agencies receiving these grants, at the request of the Secretary of the Department of Human Resources, provide a postaudit of their operations that has been done by a certified public accountant. (1975, c. 875, s. 16.)

§ 143B-140. Department of Human Resources — organization. — The Department of Human Resources shall be organized initially to include the Board of Human Resources, the Commission for Health Services, the Commission for Mental Health and Mental Retardation Services, the Eugenics Commission, the Commission for the Blind, the Professional Advisory Committee, the Blind Advisory Committee, the Social Services Commission, the Commission for Medical Facility Services and Licensure, the Council for Institutional Boards, the Council on Developmental Disabilities, the Governor's Coordinating Council on Aging, the Governor's Council on Employment of the Handicapped, the Governor's Advocacy Council on Children and Youth, the Mental Health Council, the Board of Directors of the North Carolina Sanatoriums for the Treatment of Tuberculosis, the Board of Directors of the Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina, the Board of Directors of the North Carolina Orthopedic Hospital, the Board of Directors of the Governor Morehead School, the Board of Directors of the North Carolina Schools for the Deaf, the Board of Directors for the Confederate Women's Home, the Division of Health Services, the Division of Mental Health and Mental Retardation Services, the Division of Social Services, the Division of Vocational Rehabilitation Services, the Division of Blind Services, the Division of Facility Services and Licensure, the Division of Institutional Services, the Division of Aging, and such other divisions as may be established under the provisions of this Chapter. (1973, c. 476, s. 121; 1975, c. 90; 1977, c. 242, s. 3; c. 679, ss. 5-8.)

Editor's Note. — The 1975 amendment substituted "Division of Social Services" for "Division of Social and Rehabilitative Services" near the end of the section.

The first 1977 amendment inserted "the Division of Aging" near the end of the section.

The second 1977 amendment substituted "Commission for Mental Health and Mental Retardation Services" for "Commission for Mental Health Services" near the beginning of the section and "Division of Mental Health and Mental Retardation Services" for "Division of Mental Health Services" near the end of the section.

Part 2. Board of Human Resources.

§ 143B-141. Board of Human Resources. — The Board of Human Resources shall consider and advise the Secretary of Human Resources upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Human Resources in the development of major programs and recommend priorities for the programs within the Department.

The Board of Human Resources shall have such other responsibilities and shall perform such other duties as may be specifically given to it.

The Board of Human Resources shall consist of the following 15 members: the chairman of the Commission for Health Services, the chairman of the Commission for Mental Health Services, the chairman of the Social Services Commission, the chairman of the Commission for the Blind, the chairman of the Commission for Medical Facility Services and Licensure, the chairman of the Council for Institutional Boards, eight members at large appointed by the Governor to serve at his pleasure, and the Secretary of Human Resources who shall be a member and chairman ex officio.

The Board of Human Resources shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman.

Members of the Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Board shall constitute a quorum for the transaction of business.

All clerical and other services required by the Board shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 122.)

Part 3. Commission for Health Services.

§ 143B-142. Commission for Health Services — creation, powers and duties. — There is hereby created the State Commission for Health Services of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the public health program to protect and promote public health, with the power and duty to adopt, amend, and rescind rules and regulations under, and not inconsistent with, the laws of the State necessary to carry out the provisions and purposes of this Article.

(1) The Commission for Health Services has the following powers and duties:
  a. To establish standards, adopt rules and regulations that may be necessary for the protection and promotion of the public health and the control of disease;
  b. To approve rules and regulations for sanitary management adopted by the State Board of Cosmetic Art Examiners as provided by G.S. 88-23; and
  c. To create metropolitan water districts as provided by G.S. 162A-33.

(2) The Commission for Health Services shall have the power and duty to establish standards and adopt rules and regulations:
  a. For the operation of home health agencies as provided by law;
  b. Regulating sanitary conditions of establishments providing food and lodging as provided by Article 5 of Chapter 72 of the General Statutes of the State of North Carolina;
  c. Preparing design standards to be used as a guide in approving sewage-treatment devices and holding tanks for marine toilets as provided by G.S. 75A-6(o);
  d. Relating to the use, storage, transportation, and disposal of radiation, radiation machines, and radioactive materials as

provided by Chapter 104C of the General Statutes of the State of North Carolina;

e. Adopting minimum health and sanitation standards for day-care facilities as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina;

f. Establishing specifications for sanitary privies for schools where water-carried sewerage facilities are unavailable as provided by G.S. 115-132;

g. Governing the sanitation of local confinement facilities as provided by G.S. 153-53.4;

h. Governing environmental impact statements and information required in applications to determine eligibility for water supply systems under the provision of the Clean Water Bond Bill;

i. Repealed by Session Laws 1975, c. 694, s. 6.

j. For the operation of nursing homes as defined in G.S. 130-9(e).

(3) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for public health purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(4) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Health shall remain in full force and effect unless and until repealed or superseded by action of the Commission for Health Services. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. When directed by the Department of Human Resources, local health departments shall enforce Commission for Health Services' rules and regulations under the supervision of the Department of Human Resources. (1973, c. 476, s. 123; 1975, c. 19, s. 57; c. 694, s. 6.)

Editor's Note. — The first 1975 amendment corrected an omission in the 1973 act by inserting "to" following "Relating" near the beginning of paragraph d of subdivision (2).

The second 1975 amendment repealed paragraph i of subdivision (2).

Chapter 104C, referred to in subdivision (2)d, was rewritten by Session Laws 1975, c. 718, s. 1, and recodified as Chapter 104E. Session Laws 1975, c. 718, s. 8, provides that s. 1 of the act shall expire June 30, 1981.

Section 153-53.4, referred to in subdivision (2)g of this section, was repealed by Session Laws 1973, c. 822. See now § 153A-226.

§ 143B-143. Commission for Health Services — members; selection; quorum; compensation. — The Commission for Health Services of the Department of Human Resources shall consist of 12 members, four of whom shall be elected by the North Carolina Medical Society and eight of whom shall be appointed by the Governor.

One of the members appointed by the Governor shall be a licensed pharmacist, one a dairyman, one a licensed veterinarian, one a licensed optometrist, one a licensed dentist, and one a registered nurse. The initial members of the Commission shall be the members of the State Board of Health who shall serve for a period equal to the remainder of their current terms on the State Board of Health, three of whose appointments expire May 1, 1973, and two of whose appointments expire May 1, 1975. At the end of the respective terms of office of initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The North Carolina Medical Society shall have the right to remove any member elected by it for misfeasance, malfeasance, or nonfeasance, and the Governor shall have the right to remove any member appointed by him for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973. Vacancies on said Commission among the membership elected by the North Carolina Medical Society shall be filled by the executive committee of the Medical Society until the next meeting of the Medical Society, when the Medical Society shall fill the vacancy for the unexpired term. Vacancies on said Commission among the membership appointed by the Governor shall be filled by the Governor for the unexpired term.

A majority of the members of the Commission shall constitute a quorum for the transaction of business.

The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 476, s. 124; c. 1367, ss. 1, 2.)

§ 143B-144. Commission for Health Services — officers. — The Commission for Health Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 125.)

§ 143B-145. Commission for Health Services — election meetings. — The meeting of the Commission for Health Services for the election of vice-chairman shall be at the first regular meeting after the joint session of the Commission for Health Services and the North Carolina Medical Society at the annual meeting of the North Carolina Medical Society each odd-numbered year. (1973, c. 476, s. 126.)

§ 143B-146. Commission for Health Services — regular and special meetings. — Each year there shall be four regular meetings of the Commission for Health Services, one of which shall be held during the annual meeting and conjointly with a general session of the North Carolina Medical Society at which time and place the annual report shall be submitted by the Secretary of Human Resources or his designee. The other three meetings shall be at such times and places as the chairman of the Commission shall designate. Special meetings of the Commission may be called by the chairman, or by a majority of the members of the Commission. (1973, c. 476, s. 127.)

Part 4. Commission for Mental Health and Mental Retardation Services.

§ 143B-147. Commission for Mental Health and Mental Retardation Services — creation, powers and duties. — (a) There is hereby created the Commission for Mental Health and Mental Retardation Services of the Department of Human Resources with the power and duty to adopt, amend and rescind rules and regulations to be followed in the conduct of State and local mental health, mental retardation and alcohol and drug treatment programs, in order to promote the amelioration or elimination of the mental health, mental retardation, or alcohol and drug abuse problems of the citizens of this State; however, such rules and regulations shall not be inconsistent with the provisions of this Article or other State laws. Specifically:

(1) The Commission for Mental Health and Mental Retardation Services is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the treatment programs administered by the Department of Human Resources as provided in Chapter 122 of the General Statutes of North Carolina for the mentally retarded, mentally ill and inebriate, not inconsistent with the management responsibilities of the Secretary of Human Resources provided by Chapter 143B of the General Statutes of North Carolina and the Executive Organization Act of 1973.

(2) The Commission for Mental Health and Mental Retardation Services shall have the power and duty to establish standards and adopt rules and regulations:

a. For the professional care of persons admitted to institutions, centers, or hospitals established in accordance with Chapter 122, including the authority to establish rules and regulations not contrary to law governing the admission of persons to any State institution, center or hospital under its jurisdiction which is now or may hereafter be established;

b. For establishing minimum standards for local community alcoholism programs as a condition for participation in State grants-in-aid authorized by G.S. 122-7.1(b);

c. For the establishment and operation of area mental health authorities as prescribed in Article 2F of Chapter 122 of the General Statutes;

d. For the inspection and licensing of private hospitals for the mentally disordered as provided by G.S. 122-72;

e. For the licensing of all area or community mental health facilities of whatsoever nature, pursuant to Article 2F of Chapter 122 of the General Statutes.

(3) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mental health or mental retardation or alcohol abuse programs which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(4) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Mental Health or the Commission for Mental Health Services shall remain in full force and effect unless and until repealed or superseded by action of the Commission for Mental Health and Mental Retardation Services.

(b) All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. (1973, c. 476, s. 129; 1977, c. 568, ss. 2, 3; c. 679, s. 1.)

Editor's Note. — The first 1977 amendment deleted the former subdivision (2), paragraph c, relating to the establishment and operation of local mental health clinics, and rewrote paragraphs d and e as c and d of former subdivision (2). The rewritten paragraphs were substantially the same as paragraphs c and d in subdivision (a)(2) of the section as amended by the second 1977 amendment.

The second 1977 amendment rewrote this section, reestablishing the former Commission for Mental Health Services as the Commission for Mental Health and Mental Retardation Services and making other changes.

§ 143B-148. Commission for Mental Health and Mental Retardation Services — members; selection; quorum; compensation. — (a) The Commission for Mental Health and Mental Retardation Services of the Department of Human Resources shall consist of 15 members, two of whom shall be members of the General Assembly, with concern for the problems of mental illness, mental retardation, and alcohol and drug abuse, and 13 of whom shall be citizens appointed by the Governor. Of the two members from the General Assembly, one shall be appointed by the Speaker of the House of Representatives and one shall be appointed by the President of the Senate, each to serve two-year terms commencing on July 1 of each odd-numbered year. The Commission membership shall include the following persons appointed by the Governor:

(1) Two citizens who are either a parent or guardian of a mentally retarded citizen;
(2) One mental retardation professional as defined in G.S. 122-36(i);
(3) Two citizens who are concerned with the problems in the field of mental health care for the mentally ill;
(4) One mental health professional as defined in G.S. 122-36(h);
(5) Two citizens who represent State or local citizen organizations which are concerned with the problems of alcohol or drug abusers;
(6) One professional in the field of drug or alcohol abuse, including, but not limited to professional social workers, registered nurses, medical doctors, and psychologists; and
(7) Any four citizens who, in the Governor's sound discretion, would be an asset to the Commission for Mental Health and Mental Retardation Services in carrying out its duties.

At least one of the Governor's appointees shall be an attorney licensed to practice law in the State and one a medical doctor licensed to practice medicine in the State.

The Governor shall select his 13 appointees to insure that all sections of the State have representation on the Commission. Notwithstanding the provisions of G.S. 143B-13(a) relating to existing Commission members, the Governor shall appoint members to the Commission in accordance with the foregoing membership requirements. At the initial formation of the Commission for Mental Health and Mental Retardation Services, the Governor shall designate four of his appointees to serve for two years, four to serve three years, five to serve four years, all terms to commence on July 1, 1977. Thereafter the term of all Commission members appointed by the Governor shall be four years. All Commission members shall serve their designated term and until their successors are duly appointed and qualified.

(b) Except as otherwise provided in this section, the provisions of G.S. 143B-13 relating to appointment, qualifications, terms, and removal of members shall apply to all members of the Commission for Mental Health and Mental Retardation Services. G.S. 143B-13(c) shall not apply to Commission members who are also members of the General Assembly.

(c) Commission members who are members of the General Assembly shall receive subsistence and travel allowances at the rate set forth in G.S. 120-3.1(b) and (c). Commission members who are employees of the State shall receive travel allowances at the rates set forth in G.S. 138-6. All other Commission members shall receive per diem compensation and travel expenses at the rate set forth in G.S. 138-5.

(d) A majority of the Commission shall constitute a quorum for the transaction of business.

(e) All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 130; 1977, c. 679, s. 2.)

Editor's Note. — The 1977 amendment rewrote this section, reorganizing the former Commission for Mental Health Services as the Commission for Mental Health and Mental Retardation Services and making other changes.

§ 143B-149. Commission for Mental Health and Mental Retardation Services — officers. — The Commission for Mental Health and Mental Retardation Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 131; 1977, c. 679, s. 3.)

Editor's Note. — The 1977 amendment substituted "Commission for Mental Health and Mental Retardation Services" for "Commission for Mental Health Services" in the first sentence.

§ 143B-150. Commission for Mental Health and Mental Retardation Services — regular and special meetings. — The Commission for Mental Health and Mental Retardation Services shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least eight members. (1973, c. 476, s. 132; 1977, c. 679, s. 4.)

Editor's Note. — The 1977 amendment substituted "Commission for Mental Health and Mental Retardation Services" for "Commission for Mental Health Services" near the beginning of the section.

Part 5. Eugenics Commission.

§§ 143B-151, 143B-152: Repealed by Session Laws 1977, c. 497.

Cross Reference. — As to sterilization of mentally ill and mentally retarded persons, see §§ 35-36 through 35-50.

Part 6. Social Services Commission.

§ 143B-153. Social Services Commission — creation, powers and duties. —There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 108 of the General Statutes of the State of North Carolina.

(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108 of the General Statutes of the State of North Carolina;

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care; and

c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108-66.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

a. For the inspection and licensing of maternity homes as provided by G.S. 108-76;

b. For the inspection and licensing of all boarding homes, rest homes, and convalescent homes for aged or infirm persons as provided by G.S. 108-77;

c. For the inspection and licensing of child-care institutions as provided by G.S. 108-78;

d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153-51 and Part 2 of Article 3 of Chapter 108 of the General Statutes of the State of North Carolina;

e. For the payment of the costs of necessary day care for minor children of needy families; and

f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Article 3 of Chapter 108 of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.

(6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. (1973, c. 476, s. 134; 1975, c. 747, s. 2; 1977, c. 674, s. 7.)

Editor's Note. — The 1975 amendment substituted "charitable organizations, professional fund-raising counsel and professional solicitors" for "public solicitors" in subdivision (3)f.

The 1977 amendment deleted "private" from paragraph c of subdivision (3).

Session Laws 1975, c. 747, s. 3, contains a severability clause.

Section 153-51, referred to in subdivision (3)d of this section, was repealed by Session Laws 1973, c. 822. See now § 153A-220. The reference in subdivision (3)d to Part 2 of Article 3 of Chapter 108 should be to Part 3 of that Article.

Applied in Tripp v. Flaherty, 27 N.C. App. 180, 218 S.E.2d 709 (1975).

§ 143B-154. Social Services Commission — members; selection; quorum; compensation. — The Social Services Commission of the Department of Human Resources shall consist of one member from each congressional district in the State, all of whom shall be appointed by the Governor for four-year terms.

The initial members of the Commission shall be the appointed members of the current Social Services Commission who shall serve for the remainder of their current terms and four additional members appointed by the Governor for terms expiring April 1, 1981. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, removal or disability of a member shall be for the balance of the unexpired term.

In the event that more than 11 congressional districts are established in the State, the Governor shall on July 1 following the establishment of such additional congressional districts appoint a member of the Commission from that congressional district.

If on July 1, 1977, or at any time thereafter due to congressional redistricting, two or more members of the Social Services Commission shall reside in the same congressional district, then such members shall continue to serve as members of the Commission for a period equal to the remainder of their unexpired terms, provided that upon the expiration of said term or terms the Governor shall fill such vacancy or vacancies in such a manner as to insure that as expeditiously as possible there is one member of the Social Services Commission who is a resident of each congressional district in the State.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 135; 1977, c. 516.)

Editor's Note. — The 1977 amendment rewrote the former first paragraph as the present first, second, third and fourth paragraphs. The principal change made by the amendment was to reorganize the Commission, which formerly consisted of seven members, with no residential qualifications, so as to provide for a member for each congressional district.

§ 143B-155. Social Services Commission — regular and special meetings. — The Social Services Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1973, c. 476, s. 136.)

§ 143B-156. Social Services Commission — officers. — The Commission for Social Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 137.)

Part 7. Commission for the Blind.

§ 143B-157. Commission for the Blind — creation, powers and duties. — There is hereby recreated the Commission for the Blind of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's rehabilitative programs for the blind with the power and duty to adopt, amend and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

(1) The Commission for the Blind is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 111 of the General Statutes of North Carolina.

(2) The Commission for the Blind shall have the power and duty to establish standards and adopt rules and regulations for aid to the needy blind as contained in Chapter 111 of the General Statutes of North Carolina.

(3) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for rehabilitative purposes for the blind which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(4) The Commission for the Blind shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the North Carolina State Commission for the Blind shall remain in full force and effect unless and until repealed or superseded by action of the recreated Commission for the Blind. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources. (1973, c. 476, s. 139.)

§ 143B-158. Commission for the Blind — members; selection; quorum; compensation. — The Commission for the Blind of the Department of Human Resources shall consist of 11 members appointed by the Governor. The initial members of the Commission shall include the members of the existing Commission for the Blind who shall serve for a period equal to the remainder of their current terms on the existing Commission for the Blind, three of whose appointments expire July 2, 1974, three of whose appointments expire July 2, 1975, and three of whose appointments expire July 2, 1977. No physician, no optometrist, no optician, no oculist, nor any other person who receives services or funds regulated by the Commission shall be qualified to serve on the Commission for the Blind. Any person who is presently a member of the Commission and is disqualified by reason of the preceding sentence shall be deemed to have resigned his position on the Commission. The Governor shall appoint a successor for the balance of the unexpired term. At all times at least two members of the Commission shall be persons who are visually handicapped to the minimum extent of being legally blind. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 140; 1977, c. 581.)

Editor's Note. — The 1977 amendment rewrote the former third through seventh sentences of the first paragraph as the present third through sixth sentences. The principal effect of the amendment was to disqualify from service on the Commission physicians, optometrists and other persons who might profit from the decisions of the Commission. Formerly physicians and optometrists were required to have continuous representation on the Commission.

§ 143B-159. Commission for the Blind — regular and special meetings. —The Commission for the Blind shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 476, s. 141.)

§ 143B-160. Commission for the Blind — officers. — The Commission for the Blind shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 142.)

Part 8. Professional Advisory Committee.

§ 143B-161. Professional Advisory Committee — creation, powers and duties. — There is hereby created the Professional Advisory Commiteee of the Department of Human Resources. The Professional Advisory Committee shall advise the Commission for the Blind on matters concerning or pertaining to the procurement, utilization, and rendering of professional services to the beneficiaries of the Commission's aid and services. (1973, c. 476, s. 144.)

§ 143B-162. Professional Advisory Committee — members; selection; quorum; compensation. — The Professional Advisory Committee of the Department of Human Resources shall consist of six members appointed by the Governor, three of whom shall be licensed physicians whose practice is limited to opthalmology nominated by the North Carolina Medical Society, and three optometrists nominated by the North Carolina State Optometric Society.

The initial members of the Committee shall be the members of the Professional Advisory Committee who shall serve for a period equal to the remainder of their current terms on the Professional Advisory Committee, two of which expire July 2, 1973, two of which expire July 2, 1974, and two of which expire July 2, 1975. At the end of the respective terms of office of the initial members of the Committee, the appointment of their successors shall be for terms of three years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 145.)

Part 9. Consumer and Advocacy Advisory Committee for the Blind.

§ 143B-163. Consumer and Advocacy Advisory Committee for the Blind — creation, powers and duties. — (a) There is hereby created the Consumer and Advocacy Advisory Committee for the Blind of the Department of Human Resources.

(b) The Consumer and Advocacy Advisory Committee for the Blind shall advise all State boards, commissions, agencies, divisions, departments, schools, corporations, or other State-administered associations or entities, including the secretary, director and members of said boards, commissions, agencies, divisions, departments, schools, et cetera, on the needs of the citizens of the State of North Carolina who are now or will become visually handicapped or impaired.

(c) The Consumer and Advocacy Advisory Committee for the Blind shall also advise every State board, commission, agency, division, department, school, corporation, or other State-administered associations or entity concerning sight conservation programs that it supervises, administers or controls.

(d) All State boards, commissions, agencies, divisions, departments, schools, corporations, or other State-administered associations or entities including the secretary, director and members of said State boards, agencies, departments, et cetera, which supervise, administer or control any program for or affecting the citizens of the State of North Carolina who are now or will become visually handicapped or impaired shall inform the Consumer and Advocacy Advisory Committee for the Blind of any proposed change in policy, program, budget, rule, or regulation which will affect the citizens of North Carolina who are now or will become visually handicapped or impaired. Said board, commission, et cetera, shall allow the Consumer and Advocacy Advisory Committee for the Blind, prior to passage, unless such change is made pursuant to G.S. 150A-13, an opportunity to object to the change and present information and proposals on behalf of the citizens of North Carolina who are now or will become visually handicapped or impaired. This subsection shall also apply to all sight conservation programs of the State of North Carolina.

(e) Nothing in this statute shall prohibit a board, commission, agency, division, department, et cetera, from implementing any change after allowing the Consumer and Advocacy Advisory Committee for the Blind an opportunity to object and propose alternatives. Shifts in budget items within a program or administrative changes in a program required in the day-to-day operation of an agency, department, or school, et cetera, shall be allowed without prior consultation with said Committee. (1977, c. 842, s. 1; c. 1050.)

Editor's Note. — Both 1977 amendments rewrote this section, which formerly recreated the Blind Advisory Committee. The two 1977 acts were identical, except that the second sentence of subsection (e) of the section as set out above appeared in this section as amended by Session Laws 1977, c. 842, but not in the section as amended by Session Laws 1977, c. 1050.

§ 143B-164. Consumer and Advocacy Advisory Committee for the Blind — members; selection; quorum; compensation. — (a) The Consumer and Advocacy Advisory Committee for the Blind of the Department of Human Resources shall consist of the following members:

(1) President and Vice-President of the National Federation of the Blind of North Carolina;

(2) President and Vice-President of the North Carolina Council of the Blind;
(3) President and Vice-President of the North Carolina Association of Workers for the Blind;
(4) President and Vice-President of the North Carolina Chapter of the American Association of Workers for the Blind;
(5) Chairman of the State Council of the North Carolina Lions and Executive Director of the North Carolina Lions Association for the Blind, Inc.;
(6) Chairman of the Concession Stand Committee of the Division of Services for the Blind of the Department of Human Resources;
(7) Executive Director of the North Carolina Society for the Prevention of Blindness, Inc.

Provided, each officeholder shall serve on the Committee only so long as he holds the named position in the specified organization. Upon completion of his term, failure to secure reelection or appointment, or resignation, the individual shall be deemed to have resigned from the Committee and his successor in office shall immediately become a member of the Committee.

Provided, further, if any of the above organizations dissolve or if any of the above-stated positions no longer exist, then the successor organization or position shall be deemed to be substituted in the place of the former one and the officeholder in the new organization or of the new position shall become a member of the Committee.

(b) A chairman shall be elected by a majority vote of the Committee members for a one-year term to coincide with the fiscal year of the State. Provided, the first chairman shall be elected for a term to end June 30, 1978.

Provided, further, if any chairman does not desire or is unable to continue to perform as chairman for any reason, including his becoming ineligible to be a member of the Committee as specified in subsection (a), the remaining members shall elect a chairman to fulfill the remainder of his term.

(c) A majority of the members shall constitute a quorum for the transaction of business.

(d) The Committee shall meet once a quarter to act upon any information provided them by any board, commission, agency, division, department, school, et cetera. Special meetings may be held at any time and place within the State at the call of the chairman or upon written request of at least a majority of the members. Provided, a majority of the members shall be allowed to waive any meeting.

(e) All clerical and other services required by the Committee shall be supplied by the Secretary of Human Resources.

(f) Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1977, c. 842, s. 1; c. 1050.)

Editor's Note. — Both 1977 amendments rewrote this section, which formerly related to the organization of the Blind Advisory Committee. The amendments to this section were identical.

Part 10. North Carolina Medical Care Commission.

§ 143B-165. North Carolina Medical Care Commission — creation, powers and duties. — There is hereby created the North Carolina Medical Care Commission of the Department of Human Resources with the power and duty to promulgate rules and regulations to be followed in the construction and maintenance of public and private hospitals, medical centers, and related facilities with the power and duty to adopt, amend and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article.

(1) The North Carolina Medical Care Commission has the duty to adopt statewide plans for the construction and maintenance of hospitals, medical centers, and related facilities, or such other as may be found desirable and necessary in order to meet the requirements and receive the benefits of any federal legislation with regard thereto.

(2) The Commission is authorized to adopt such rules and regulations as may be necessary to carry out the intent and purposes of Article 13 of Chapter 131 of the General Statutes of North Carolina.

(3) The Commission may adopt such reasonable and necessary standards with reference thereto as may be proper to cooperate fully with the Surgeon General or other agencies or departments of the United States and the use of funds provided by the federal government as contained and referenced in Article 13 of Chapter 131 of the General Statutes of North Carolina.

(4) The Commission shall have the power and duty to approve projects in the amounts of grants-in-aid from funds supplied by the federal and State governments for the planning and construction of hospitals and other related medical facilities according to the provisions of Article 13 of Chapter 131 of the General Statutes of North Carolina.

(5) The Commission shall have the power and duty to adopt rules and regulations with regard to the awarding of loans and scholarships to students in accordance with the provisions of Article 13 of Chapter 131 of the General Statutes of North Carolina.

(6) The Commission has the duty to adopt rules and regulations and standards with respect to the different types of hospitals to be licensed under the provisions of Article 13A of Chapter 131 of the General Statutes of North Carolina.

(7) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for medical facility services and licensure which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(8) The Commission shall adopt such rules and regulations, consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the North Carolina Medical Care Commission shall remain in full force and effect unless and until repealed or superseded by action of the North Carolina Medical Care Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.

(9) The Commission shall have the power and duty to adopt rules and regulations with regard to emergency medical services in accordance with the provisions of Article 26 of Chapter 130 and Article 56 of Chapter 143 of the General Statutes of North Carolina. (1973, c. 476, s. 148; c. 1090, s. 2; c. 1224, s. 3.)

The Medical Care Commission is a creature of the State of North Carolina. Hawkins v. North Carolina Dental Soc'y, 355 F.2d 718 (4th Cir. 1966).

And the functions it serves are concededly public functions of the State. Hawkins v. North Carolina Dental Soc'y, 355 F.2d 718 (4th Cir. 1966).

§ 143B-166. North Carolina Medical Care Commission — members; selection; quorum; compensation. — The North Carolina Medical Care Commission of the Department of Human Resources shall consist of 17 members appointed by the Governor. Three of the members appointed by the Governor shall be nominated by the North Carolina Medical Society, one member shall be nominated by the North Carolina Nurses Association, one member shall be nominated by the North Carolina Pharmaceutical Association, one member nominated by the Duke Foundation and one member nominated by the North Carolina Hospital Association. The remaining 10 members of the North Carolina Medical Care Commission shall be appointed by the Governor and selected so as to fairly represent agriculture, industry, labor, and other interest groups in North Carolina. One such member appointed by the Governor shall be a dentist licensed to practice in North Carolina. The initial members of the Commission shall be 18 members of the North Carolina Medical Care Commission who shall serve for a period equal to the remainder of their current terms on the North Carolina Medical Care Commission, six of whose appointments expire June 30, 1973, four of whose appointments expire June 30, 1974, four of whose appointments expire June 30, 1975, and four of whose appointments expire June 30, 1976. To achieve the required 17 members the Governor shall appoint three members to the Commission upon the expiration of four members' initial terms on June 30, 1973. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

Vacancies on said Commission among the membership nominated by a society, association, or foundation as hereinabove provided shall be filled by the Executive Committee or other authorized agent of said society, association or foundation until the next meeting of the society, association or foundation at which time the society, association or foundation shall nominate a member to fill the vacancy for the unexpired term.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 149; c. 1090, s. 2.)

§ 143B-167. North Carolina Medical Care Commission — regular and special meetings. — The North Carolina Medical Care Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least nine members. (1973, c. 476, s. 150; c. 1090, s. 2.)

§ 143B-168. North Carolina Medical Care Commission — officers. — The North Carolina Medical Care Commission shall have a chairman and vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 151; c. 1090, s. 2.)

Part 11. Council for Institutional Boards.

§ 143B-169. Council for Institutional Boards — creation, powers and duties. — There is hereby created the Council for Institutional Boards of the Department of Human Resources. The Council for Institutional Boards shall have the following functions and duties:

(1) To investigate the development of uniform policies relating to the operation and management of all of the institutions represented on the Council and make recommendations to the Secretary of Human Resources concerning the implementation of those policies;
(2) To provide a clearinghouse function to facilitate interinstitutional communication for the purpose of exchanging information that might be helpful to other council member institutions;
(3) To provide representation for the institutions on the Board of Human Resources, and
(4) To consider and advise the Secretary of Human Resources upon any matter the Secretary may refer to it. (1973, c. 476, s. 153.)

§ 143B-170. Council for Institutional Boards — members; selection; quorum; compensation. — The Council for Institutional Boards of the Department of Human Resources shall consist of the chairman respectively of the following bodies:

(1) The Board of Directors of the North Carolina Specialty Hospitals;
(2) The Board of Directors of the North Carolina Orthopedic Hospital;
(3) The Board of Directors of the Lenox Baker Children's Hospital;
(4) The Board of Directors of the Governor Morehead School;
(5) The Board of Directors of the North Carolina Schools for the Deaf; and
(6) The Board of Directors of the Confederate Women's Home.

Members shall serve on the Council for the same terms they serve as chairman of their respective institutional boards.

A majority of the members of the Council shall constitute a quorum for the transaction of business.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 476, s. 154; 1977, c. 462, s. 1.)

Editor's Note. — The 1977 amendment substituted "North Carolina Specialty Hospitals" for "North Carolina Sanatoriums for the Treatment of Tuberculosis" in subdivision (1) and "Lenox Baker Children's Hospital" for "Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina" in subdivision (3) in the first paragraph.

§ 143B-171. Council for Institutional Boards — officers. — The Council for Institutional Boards shall elect from its membership a chairman and such other officers as it deems necessary. The chairman shall serve for a period of one year unless his term as chairman of one of the representative institutional boards is terminated sooner, in which case, the Council shall elect a successor. The chairman may succeed himself at the pleasure of the Council. (1973, c. 476, s. 155.)

§ 143B-172. Council for Institutional Boards — regular and special meetings. — The Council for Institutional Boards shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 156.)

Part 12. Boards of Directors of Institutions.

§ 143B-173. Boards of directors of institutions — creation, powers and duties. — (a) There are hereby created the following boards of directors of institutions:

(1) The Board of Directors of the North Carolina Specialty Hospitals;
(2) The Board of Directors of the North Carolina Orthopedic Hospital;
(3) The Board of Directors of the Lenox Baker Children's Hospital;
(4) The Board of Directors of the Governor Morehead School;
(5) The Board of Directors of the North Carolina Schools for the Deaf; and
(6) The Board of Directors of the Confederate Women's Home

with the power and duty to adopt rules and regulations to be followed in the conduct of their respective institutions.

(b) Each board of directors hereinabove created is authorized and empowered to establish standards and adopt rules and regulations:

(1) For the professional care of persons admitted to institutions established in accordance with the General Statutes under their authority, including the authority to establish rules and regulations not contrary to law governing the admission of persons to any State institution under its jurisdiction which is now or may hereafter be established; and
(2) To make the institutions under their control as nearly self-supporting as shall be consistent with the purposes of their creation.

(c) The board of directors of each institution is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid to such an institution which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid. (1973, c. 476, s. 157; 1977, c. 462, s. 2.)

Editor's Note. — The 1977 amendment substituted "North Carolina Specialty Hospitals" for "North Carolina Sanatoriums for the Treatment of Tuberculosis" in subdivision (1) and "Lenox Baker Children's Hospital" for "Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina" in subdivision (3), of subsection (a).

§ 143B-174. Boards of directors of institutions — members; selection; quorum; compensation. — The Board of Directors of the North Carolina Specialty Hospitals of the Department of Human Resources shall consist of 12 members appointed by the Governor for terms of six years. The Board of Directors of the Lenox Baker Children's Hospital of the Department of Human Resources shall consist of nine members appointed by the Governor for terms of six years. The Board of Directors of the North Carolina Orthopedic Hospital of the Department of Human Resources shall consist of nine members appointed by the Governor for terms of six years. The Board of Directors of the Governor Morehead School of the Department of Human Resources shall consist of 11 members appointed by the Governor for terms of six years. The Board of Directors of the North Carolina Schools for the Deaf of the Department of Human Resources shall consist of 11 members appointed by the Governor for terms of four years. The Board of Directors of the Confederate Women's Home of the Department of Human Resources shall consist of seven members appointed by the Governor for terms of two years. The initial members of each of the aforementioned boards of directors shall be the members of the previously existing board of directors for each institution. The members of the various boards of directors shall serve for a period equal to the remainder of their current terms on their respective boards, which are as follows: the Board of Directors of North Carolina Specialty Hospitals, four of whose appointments expire April 29, 1973, four of whose appointments expire April 29, 1975, and four of whose appointments expire April 29, 1977; the Board of Directors of the North

Carolina Orthopedic Hospital, two of whose appointments expire April 4, 1973, four of whose appointments expire April 4, 1975, and three of whose appointments expire April 4, 1977; the Board of Directors of the Lenox Baker Children's Hospital, three of whose appointments expire July 10, 1973, three of whose appointments expire July 10, 1975, and three of whose appointments expire July 10, 1977; the Board of Directors of the Governor Morehead School, four of whose appointments expire May 1, 1973, three of whose appointments expire May 1, 1975, and four of whose appointments expire May 1, 1977; the Board of Directors of the North Carolina Schools for the Deaf, all of whose appointments expire July 17, 1973; and the Board of Directors of the Confederate Women's Home, all of whose appointments expire June 30, 1973. At the end of the respective terms of office of the initial members of each board, their successors shall be appointed for terms as hereinabove delineated and until their successors are appointed and qualify. Any appointment to fill a vacancy on the board of directors created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of a board of directors from office for misfeasance, malfeasance or nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of each board of directors shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of a board of directors shall constitute a quorum for the transaction of business.

All clerical and other services required by a board of directors shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 158; 1977, c. 462, s. 3.)

Editor's Note. — The 1977 amendment substituted "Specialty Hospitals" for "Sanatoriums for the Treatment of Tuberculosis" in the first sentence, "Lenox Baker Children's Hospital" for "Lenox Baker Cerebral Palsy and Crippled Children's Hospital of North Carolina" in the second and eighth sentences and "North Carolina Specialty Hospitals" for "Tuberculosis Sanatoriums" in the eighth sentence of the first paragraph.

§ 143B-175. Boards of directors of institutions — regular and special meetings. — Each board of directors hereinabove created shall meet at least once in each quarter and may hold special meetings at any time and place at the call of the chairman or upon the written request of at least a majority of its members. (1973, c. 476, s. 159.)

§ 143B-176. Boards of directors of institutions — officers. — Each board of directors shall have a chairman and a vice-chairman. The chairman of each board of directors shall be designated by the Governor from among the members of the board of directors to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of each board and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 160.)

Part 13. Council on Developmental Disabilities.

§ 143B-177. Council on Developmental Disabilities — creation, powers and duties. — There is hereby created the Council on Developmental Disabilities of the Department of Human Resources. The Council on Developmental Disabilities shall have the following functions and duties:

(1) To provide advice to the Secretary of Human Resources as will facilitate the implementation of the State plan and the fulfillment of the requirements of Public Law 91-517, the Developmental Disabilities and Facilities Construction Amendment of 1970;

(2) To study ways and means of promoting public understanding of developmental disabilities; to consider the need for new State programs and laws in the field of developmental disabilities; and to make recommendations to and advise the Secretary of Human Resources on the matters relating to developmental disabilities;

(3) To advise in the preparation of a plan describing the quality, extent and scope of services being provided, or to be provided, to persons with developmental disabilities in North Carolina;

(4) To examine the programs of all State agencies which provide services for persons with developmental disabilities and to make recommendations to the Secretary of Human Resources for coordination of programs to prevent duplication and overlapping of such services; and

(5) The Council shall advise the Secretary of Human Resources upon any matter the Secretary may refer to it. (1973, c. 476, s. 167.)

§ 143B-178. Council on Developmental Disabilities — definitions. — The following definitions apply to this Chapter:

(1) The term "developmental disability" means a disability of a person which

  a. 1. Is attributable to mental retardation, cerebral palsy, epilepsy, or autism;

    2. Is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such persons; or

    3. Is attributable to dyslexia resulting from a disability described in clause 1 or 2 of this subparagraph;

  b. Originates before such person attains age 18;

  c. Has continued or can be expected to continue indefinitely;

  d. Constitutes a substantial handicap to such person's ability to function normally in society.

(2) The term "services for persons with developmental disabilities," as it is used in this Article, means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability, and such term includes diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such a disability and of his family, protective and other social and sociolegal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities. (1973, c. 476, s. 168; 1977, c. 881, ss. 1, 2.)

Editor's Note. — The 1977 amendment rewrote subdivision (1) and inserted "habilitation or" near the beginning of subdivision (2).

§ 143B-179. Council on Developmental Disabilities — members; selection; quorum; compensation. — The Council on Developmental Disabilities of the Department of Human Resources shall consist of 36 members appointed by the Governor. The composition of the Council shall be as follows:

(1) Fifteen members from the General Assembly and State government agencies as follows: two persons who are members of the Senate, two persons who are members of the House of Representatives, one representative of the Department of Human Resources, one representative of the Department of Public Instruction, one representative of the Department of Correction, and eight representatives of the Department of Human Resources to include representatives from the State health planning and development agency, health services, mental health services, vocational rehabilitation services, division of aging, services for the blind, social services, and youth services.

(2) Twelve members designated as consumers of services for the developmentally disabled. As used in this section, the term "consumer" means persons with developmental disabilities, or their parents or guardians, who are not officers of any entity, or employees of any State agency or of any other entity, which receives federal funds under Part A, Title I, P.L. 90-170 as amended by P.L. 91-517 and P.L. 94-103, entitled "Mental Retardation Facilities and Community Health Centers Construction Act of 1963."

(3) Nine members at large, who by their interests and efforts have helped provide or may help provide improved services for those who are developmentally disabled. Of the nine at-large members, at least one shall represent each of the following organizations: North Carolina Association of Retarded Citizens, North Carolina United Cerebral Palsy, Epilepsy Association of North Carolina, and North Carolina Society for Autistic Children.

The initial members of the Council shall include the appointed members of the Council on Mental Retardation and Developmental Disabilities who shall serve for a period equal to the remainder of their current terms on the Council on Mental Retardation and Developmental Disabilities four of whose terms expire June 30, 1973, four of whose terms expire June 30, 1974, two of whose terms expire June 30, 1975, and three of whose terms expire June 30, 1976. At the end of the respective terms of office of the initial members of the Council, the appointments of all members, with the exception of those from the General Assembly and State agencies shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 169; c. 1117; 1977, c. 881, s. 3.)

Editor's Note. — The 1977 amendment substituted "36 members" for "30 members" in the first sentence of the first paragraph, and rewrote subdivisions (1), (2) and (3) of the first paragraph so as to provide for 15, rather than 14, members from the General Assembly and State government agencies, 12, rather than 10, consumer members, and nine, rather than six, members at large.

Part 14. Governor's Advisory Council on Aging; Division of Aging.

§ 143B-180. Governor's Advisory Council on Aging — creation, powers and duties. — There is hereby created the Governor's Advisory Council on Aging of the Department of Human Resources. The Advisory Council on Aging shall have the following functions and duties:

(1) To make recommendations to the Secretary of Human Resources aimed at improving human services to the elderly;

(2) To study ways and means of promoting public understanding of the problems of the aging, to consider the need for new State programs in the field of aging, and to make recommendations to and advise the Secretary on these matters;

(3) To advise the Department of Human Resources in the preparation of a plan describing the quality, extent and scope of services being provided, or to be provided, to elderly persons in North Carolina;

(4) To study the programs of all State agencies which provide services for elderly persons and to advise the Secretary of Human Resources on the coordination of programs to prevent duplication and overlapping of such services;

(5) To advise the Secretary of Human Resources upon any matter which the Secretary may refer to it. (1973, c. 476, s. 171; 1977, c. 242, s. 1.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 143B-181. Governor's Advisory Council on Aging — members; selection; quorum; compensation. — The Governor's Advisory Council on Aging of the Department of Human Resources shall consist of 30 members, 26 members to be appointed by the Governor, two members to be appointed by the Lieutenant Governor, and two members to be appointed by the Speaker of the House of Representatives. The composition of the Council shall be as follows: eight members from State government agencies as follows: one representative of the Department of Administration; one representative of the Department of Cultural Resources; the Chairman of the Employment Security Commission; the Executive Secretary of the Teachers' and State Employees' Retirement System; the Commissioner of Labor; one representative of the Department of Public Education; the Department of Human Resources Special Assistant for Coordination of Nutrition Programs; and one representative of the Department of Natural Resources and Community Development; the Director of the School of Public Health of the University of North Carolina; the Director of Agricultural Extension Service of North Carolina State University; one representative of the collective body of the Medical Society of North Carolina; and 19 members at large shall be actual consumers of services of programs supported through Title III and Title VII of the Older Americans' Act of 1965 as amended, including low income, and minority older persons, at least in proportion to the number of minority older persons in the State. The Governor shall appoint 15 members at large who shall meet these qualifications. The four remaining members at large, two of whom shall be appointed by the Lieutenant Governor and two of whom shall be appointed by the Speaker of the House of Representatives, shall be broadly representative of the major private agencies and organizations in the State who are experienced in or have demonstrated particular interest in the special needs of the elderly. The Council shall meet preferably bimonthly, but at least quarterly.

Present at-large members of the Council shall serve for a period equal to the remainder of their current terms on the Governor's Advisory Council on Aging, two of whose appointments expire June 30, 1975, two of whose appointments expire June 30, 1976, six of whose appointments expire June 30, 1977, and one whose appointment expires June 30, 1978. Two new members at large shall be appointed whose terms shall expire June 30, 1975, one to be appointed by the Governor and one to be appointed by the Lieutenant Governor; two new members at large shall be appointed whose terms shall expire June 30, 1976, one to be appointed by the Governor and one to be appointed by the Speaker of the House of Representatives; four new members at large shall be appointed whose terms shall expire June 30, 1978, two to be appointed by the Governor, one to be appointed by the Lieutenant Governor, and one to be appointed by the Speaker of the House of Representatives; thereafter, at-large members shall be appointed for full four-year terms and until their successors are appointed and qualify. Ad interim appointments shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council as chairman to serve in such capacity at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources. (1973, c. 476, s. 172; 1975, c. 128, ss. 1, 2; 1977, c. 242, s. 2; c. 771, s. 4.)

Editor's Note. — The 1975 amendment rewrote the first sentence, substituted "eight members" for "seven members" and inserted "the Department of Human Resources Special Assistant for Coordination of Nutrition Programs" in the second sentence, substituted the language beginning "and 19 members at large" for "and 11 members at large, all of whom shall be over the age of 65, four of whom shall derive their chief source of income from social security payments" at the end of the second sentence and added the third, fourth and fifth sentences, all in the first paragraph. The amendment also rewrote the second paragraph.

The first 1977 amendment substituted "Advisory" for "Coordinating" in the title of the Council.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-181.1. Division of Aging — creation, powers and duties. — There is hereby created within the office of the Secretary of the Department of Human Resources a Division of Aging, which shall have the following functions and duties:

(1) To maintain a continuing review of existing programs for the aging in the State of North Carolina, and periodically make recommendations to the Secretary of Human Resources for transmittal to the Governor and the General Assembly as appropriate for improvements in and additions to such programs;

(2) To study, collect, maintain, publish and disseminate factual data and pertinent information relative to all aspects of aging. These include the societal, economic, educational, recreational and health needs and opportunities of the aging;

(3) To stimulate, inform, educate and assist local organizations, the community at large, and older people themselves about aging, including needs, resources and opportunities for the aging, and about the role they can play in improving conditions for the aging;

(4) To serve as the agency through which various public and nonpublic organizations concerned with the aged can exchange information, coordinate programs, and be helped to engage in joint endeavors;
(5) To provide advice, information and technical assistance to North Carolina State government departments and agencies and to nongovernmental organizations which may be considering the inauguration of services, programs, or facilities for the aging, or which can be stimulated to take such action;
(6) To coordinate governmental programs with private agency programs for aging in order that such efforts be effective and that duplication and wasted effort be prevented or eliminated;
(7) To promote employment opportunities as well as proper and adequate recreational use of leisure for older people, including opportunities for uncompensated but satisfying volunteer work;
(8) To identify research needs, encourage research, and assist in obtaining funds for research and demonstration projects; and
(9) To establish or help to establish demonstration programs of services to the aging.

The Division shall function under the authority of the Department of Human Resources and the Secretary of Human Resources as provided in the Executive Organization Act of 1973 and shall perform such other duties as are assigned by the Secretary. (1977, c. 242, s. 4.)

§ 143B-181.2. Assistant Secretary for Aging — appointment and duties. — (a) The Secretary of Human Resources shall appoint an assistant secretary in the Department of Human Resources, whose title shall be the Assistant Secretary for Aging. The Assistant Secretary for Aging shall monitor all aging programs in the Department of Human Resources and shall have such powers and duties as are conferred on him by this Part and delegated to him by the Secretary of Human Resources.

(b) The Assistant Secretary for Aging, through the appropriate subunits of the Department of Human Resources, shall, at the request of the Secretary, identify program needs for the aging, recommend program changes, coordinate intra-departmental program efforts, represent the Secretary in aging matters before boards and commissions, the General Assembly and the public, coordinate program contacts between the Department of Human Resources and private, State and federal agencies, initiate special studies on aging matters, and have the responsibility of assuring that services are delivered to the elderly of the State. (1977, c. 242, s. 4.)

Part 15. Mental Health Advisory Council.

§ 143B-182. Mental Health Advisory Council — creation, powers and duties. — There is hereby created the Mental Health Advisory Council of the Department of Human Resources. The Mental Health Advisory Council shall have the following functions and duties:

(1) To consider ways and means to promote mental health in North Carolina and to study needs for new legislation pertaining to mental health of the citizens of the State; and
(2) The Mental Health Advisory Council shall advise the Secretary of Human Resources upon any matter the Secretary may refer to it.
(3) Additionally, the Mental Health Advisory Council shall consult with the Secretary of Human Resources in administering a State plan for the provision of comprehensive mental health services and the Council is empowered to engage in any activities specified in federal mental health legislation for the purpose of meeting requirements set by

federal authorities as a condition to receiving federal aid. (1973, c. 476, s. 174; 1977, c. 694, ss. 1, 2.)

Editor's Note. — The 1977 amendment inserted "Advisory" in the title of the Council and added subdivision (3).

§ 143B-183. Mental Health Advisory Council — members; selection; quorum; compensation. — The Mental Health Advisory Council of the Department of Human Resources shall consist of no more than 35 members appointed by the Governor. The composition of the Council shall be as follows:

(1) Nine members from the General Assembly and State government agencies as follows: two members of the Senate nominated by the President of the Senate, two members of the House of Representatives nominated by the Speaker of the House of Representatives, two representatives of the Department of Public Education, two representatives of the Department of Correction, and one representative of the Department of Military and Veterans Affairs;

(2) Three members designated by the respective associations to the Governor for appointment — one member representing the North Carolina Personnel and Guidance Association, one member representing the North Carolina Council on Developmental Disabilities and one member representing the North Carolina Council of Family Service Agencies; and

(3) Up to 23 at-large members. — These appointments shall be made pursuant to current federal rules and regulations which prescribe the selection process and demographic blend as a necessary condition to the receipt of federal aid. At the Governor's request, the Department of Human Resources shall render to the Governor such advice and assistance as may be required to make the proper appointments to meet the federal requirements. The Governor shall exercise his power of appointment to reconstitute or fill vacancies on the Council in a manner that will meet current federal rules and regulations concerning the Council.

The initial members of the Council shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Council members who are members of the General Assembly shall receive subsistence and travel allowance at the rate set forth in G.S. 120-3.1(b) and (c). Council members who are employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. All other Council members shall receive per diem compensation and travel expenses at the rate set forth in G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of the Department. (1973, c. 476, s. 175; 1977, c. 694, ss. 3-7.)

Editor's Note. — The 1977 amendment in the first paragraph inserted "Advisory" in the title of the Council, substituted "no more than 35 members" for "21 members" in the first sentence, substituted "Department of Correction" for "Department of Social

Rehabilitation and Control" in subdivision (1) and "Council on Developmental Disabilities" for "Council on Mental Retardation" in subdivision (2), rewrote subdivision (3) and rewrote the fifth paragraph.

Part 16. Governor's Council on Employment of the Handicapped.

§§ 143B-184, 143B-185: Transferred to §§ 143B-412, 143B-413 by Session Laws 1977, c. 872, s. 2.

Part 17. Governor's Advocacy Council on Children and Youth.

§§ 143B-186, 143B-187: Transferred to §§ 143B-414, 143B-415 by Session Laws 1977, c. 872, s. 6.

Part 18. Council on Sickle Cell Syndrome.

§ 143B-188. Council on Sickle Cell Syndrome — appointment. — A Council on Sickle Cell Syndrome shall be appointed by the Governor to determine the needs and to make recommendations for legislative action with regard to sickle cell syndrome and related genetic disorders. (1973, c. 570, s. 1.)

Editor's Note. — Session Laws 1973, c. 570, s. $9^1/_2$ provides: "Effective July 1, 1974, the Council is transferred to the Department of Human Resources, and the function of the Council shall be carried out by said Department in the same manner as provided in section 9 and each subsection of the same as appears in Chapter 476 of the 1973 Session Laws, and the codifiers of the Statutes shall insert the appropriate General Statute Chapter and Section." It would seem that the reference should have been to s. 10 [§ 143B-10] of Session Laws 1973, c. 476.

§ 143B-189. Council on Sickle Cell Syndrome — membership. — In making the appointments, due consideration should be given to persons representing the following areas:

(1) Members of community foundations interested in sickle cell syndrome and related disorders;
(2) Public health officials; federal, State and local officials from offices concerned with rehabilitation and social services;
(3) Faculty of universities and staff of hospitals;
(4) Members of local and State school boards;
(5) Patients with, or relatives of patients with sickle cell disease. (1973, c. 570, s. 2.)

§ 143B-190. Council on Sickle Cell Syndrome — composition; expenses. —The Council shall consist of a temporary chairman appointed by the Governor and 14 other members. They shall serve without compensation except for reimbursement for travel and expenses in pursuit of the business of the Council. (1973, c. 570, s. 3.)

§ 143B-191. Council on Sickle Cell Syndrome — staff; office space. — The Council shall be empowered to employ a staff and to obtain office space. (1973, c. 570, s. 4.)

§ 143B-192. Council on Sickle Cell Syndrome — powers and duties. — The work-scope of the Council shall involve the following:

(1) Assess the needs of the State with regard to:
  a. Education of the people about sickle cell syndrome and related genetic disorders;
  b. Personnel and facilities available for the treatment of patients with sickle cell syndrome and related genetic disorders;
  c. Mechanisms for assisting in the payment of medical expenses incurred by sickle cell syndrome and related genetic disorders;
  d. Rehabilitation of patients with sickle cell syndrome and related genetic disorders;
  e. Discrimination against patients with sickle cell syndrome in employment, insurance and other activities;
  f. Establishment of centers for testing for sickle cell syndrome and related genetic disorders;
  g. Special education and counsel of those tested in such centers;
  h. Research in the diagnosis and treatment of sickle cell syndrome and other related genetic disorders;
  i. Critique of present organizations with interest in sickle cell disease.

(2) The Council shall study programs currently active concerning sickle cell syndrome and related genetic disorders and shall make recommendations for legislation which would coordinate the currently active programs with those recommended in the "work-scope of the Council."

(3) The Council shall consult with and advise the North Carolina Department of Human Resources regarding the establishment of programs for and the promulgation of rules and regulations governing education, voluntary testing and adequate counseling for sickle cell syndrome and related genetic disorders.

(4) Upon completion of the study, the Council shall recommend to the legislature such appropriate legislation as will best serve the needs of the people of North Carolina with regard to sickle cell syndrome and related genetic disorders. (1973, c. 476, s. 128; c. 570, s. 5.)

§ 143B-193. Council on Sickle Cell Syndrome — rules and regulations. — The North Carolina Department of Human Resources is hereby authorized, after consultation with the Council on Sickle Cell Syndrome, to promulgate rules and regulations providing for the establishment and operation of programs providing education, voluntary testing, and adequate counseling for sickle cell syndrome and related genetic disorders. "Sickle cell syndrome" includes sickle cell disease, sickle cell trait, sickle cell thalassemia, and variants. (1973, c. 476, s. 128; c. 570, s. 6.)

§ 143B-194. Secretary of Human Resources to initiate pilot programs. — The Secretary of Human Resources is hereby authorized to initiate pilot programs for education, voluntary testing, and counseling for and about sickle cell syndrome and related genetic disorders. (1973, c. 476, s. 128; c. 570, s. 7.)

§ 143B-195. Duties of local health departments and Department of Human Resources to persons affected by sickle cell syndrome. — If any individual is found to have any aspect of the sickle cell syndrome or related genetic disorders, it shall be the duty of the local health department to inform the individual to that effect. It shall be the duty of the North Carolina Department of Human Resources to make available testing and counseling services to any persons so requesting testing relative to sickle cell syndrome or related genetic disorders, their characteristics, symptoms, traits, effects and treatments. Such testing and counseling by the North Carolina Department of Human Resources and local health departments shall be furnished without cost to persons requesting it. (1973, c. 476, s. 128; c. 570, s. 8.)

§ 143B-196. When testing program to begin; counselors. — Any program for voluntary testing shall begin no sooner than 60 days after the implementation of an adequate and effective educational program. Counseling shall be done only by persons adequately trained and certified according to criteria established by recognized authorities in the field of human genetics. (1973, c. 570, s. 9.)

Part 19. Commission for Human Skills and Resource Development.

§ 143B-197. Legislative intent. — The General Assembly hereby declares that it shall be the policy of this State insofar as possible to train and utilize qualified individuals residing in local communities to make available adequate counseling and referral services for all North Carolinians. (1973, c. 961, s. 1.)

§ 143B-198. Creation. — There is hereby created within the Department of Human Resources the Commission for Human Skills and Resource Development (hereinafter called the "Commission") which shall provide the mechanism in each county in this State to develop counseling abilities among community resource personnel in helping professions and other appropriate persons. The purpose of this Commission shall be to develop programs to sensitize persons and groups working with individuals and families, to increase competence in counseling skills of selected persons, and to consider ways of dealing with factors which adversely affect the quality of life in North Carolina. (1973, c. 961, s. 2.)

§ 143B-199. Membership; appointment; terms; vacancies. — The Commission shall consist of 20 members. Fourteen members shall be appointed by the Governor, and six members shall be appointed from the General Assembly, three by the Speaker of the House of Representatives and three by the President of the Senate. Of the 14 members to be appointed by the Governor for the first Commission, four shall be appointed for a term of one year, five for a term of three years and five for a term of five years. As the terms of these Commissioners expire, the Governor shall appoint their successors for terms of five years. The six members appointed from the General Assembly shall serve for a term of two years. Any vacancy arising for any cause other than the expiration of the term shall be filled by the original appointing authority for the unexpired term. The Governor shall designate the chairman from among the membership of the Commission. (1973, c. 961, s. 3.)

§ 143B-200. Appointment of Commission staff. — A chief administrator and executive officer, a planning officer, a secretary, and other appropriate staff shall be appointed according to the Executive Organization Act of 1973. No person employed by the Commission shall be a member thereof. (1973, c. 961, s. 4.)

§ 143B-201. Power to make rules, enter contracts and accept gifts. — The Commission shall make all rules and regulations necessary to its purpose as stated in G.S. 143B-197 and is hereby authorized to enter into any agreement or contract, to purchase or lease property both real and personal, to adopt and accept grants and gifts of whatsoever nature, and to do all other things necessary to carry out the interest and purpose of such Commission. (1973, c. 961, s. 5.)

§ 143B-202. Authority to receive grants-in-aid. — The Commission is hereby authorized to receive grants-in-aid from the federal government for carrying out the provisions of this Part. (1973, c. 961, s. 6.)

§ 143B-203. Compensation of members. — The members of the Commission shall receive no compensation for their services; but their travel and per diem expenses shall be paid as authorized for members of State Commissions under G.S. 138-5. (1973, c. 961, s. 7.)

Part 20. Commission of Anatomy.

§ 143B-204. Commission of Anatomy — creation; powers and duties. — There is hereby created the Commission of Anatomy of the Department of Human Resources with the power and duty to adopt rules and regulations for the distribution of dead human bodies and parts thereof for the purpose of promoting the study of anatomy in the State of North Carolina. The Commission is authorized to receive dead bodies pursuant to G.S. 90-216.6 and to be a donee of a body or parts thereof pursuant to Article 15A of Chapter 90 of the General Statutes known as the Uniform Anatomical Gift Act and to distribute such bodies or parts thereof pursuant to the rules and regulations adopted by the Commission. (1975, c. 694, s. 2.)

§ 143B-205. Commission of Anatomy — members; selection; term; chairman; quorum; meetings. — The Commission of Anatomy shall consist of five members, one from the membership of the State Board of Mortuary Science, and one each from the University of North Carolina School of Medicine, East Carolina University School of Medicine, Duke University School of Medicine, and Bowman Gray School of Medicine. The dean of each school shall make recommendations and the Secretary of Human Resources shall appoint from such recommendations a member to the Commission. The president of the State Board of Mortuary Science shall appoint one member from that Board to the Commission. The members shall serve terms of four years except two of the original members shall serve a term of one year, one shall serve a term of two years, one shall serve a term of three years, and one shall serve a term of four years. The Secretary shall determine the terms of the original members.

Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Secretary shall have the power to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance.

The Commission shall elect a chairman annually from its own membership.

A majority of the Commission shall constitute a quorum for the transaction of business.

The Commission shall meet at any time and place within the State at the call of the chairman or upon the written request of three members.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1975, c. 694, s. 2.)

§ 143B-206. Commission of Anatomy — reference to former Board of Anatomy in testamentary disposition. — A testamentary disposition of a body or part thereof to the former Board of Anatomy shall be deemed in all respects to be a disposition to the Commission of Anatomy. (1975, c. 694, s. 2.)

Part 21. Youth Services Advisory Committee.

§ 143B-207. Committee created; duties. — There is hereby created the Youth Services Advisory Committee of the Department of Human Resources to advise the Secretary of Human Resources in the development of youth services' programs. The Youth Services Advisory Committee shall have the following duties:

(1) To study available literature and research findings concerning juvenile delinquency, its causes, and various treatment models, and to make recommendations to the Secretary of Human Resources regarding programs which will provide effective treatment and rehabilitation for children in institutions and in community-based programs;

(2) To advise the Secretary in encouraging the development of delinquency prevention programs and community-based services by private groups so that such programs can be responsive to local needs, so that local leadership and private groups can be responsible for their programs, so that programs which meet State standards can be assisted by available State and federal funds, and so that available private funds can be utilized with State, federal and local government funds where appropriate;

(3) To advise the Secretary of its recommendations for the development of a program which would coordinate the resources of State government within the appropriate departments in order to provide technical assistance to local areas within the State in planning delinquency prevention programs and community-based services for youth;

(4) To advise the Secretary of its recommendations for program evaluation standards for delinquency prevention programs, community-based services, both residential and nonresidential, and institutional treatment programs;

(5) To advise the Secretary in the development of delinquency prevention programs and community-based services under public auspices where there is no local private leadership;

(6) To make recommendations to the Secretary of Human Resources for transmittal to the Juvenile Justice Planning Committee as it develops a comprehensive plan for juvenile justice;

(7) To make recommendations to the Secretary of Human Resources for transmittal to the Social Services Commission when it considers proposed standards for the placement and supervision of delinquent children under the authority of G.S. 143B-153(2)c;

(8) To review for the Secretary of Human Resources any applications referred to it for federal funds for training schools, delinquency prevention programs and community-based services and to make recommendations to the Secretary on the Department's priorities for such proposed programs and the appropriate use of available federal funds;

(9) To advise and assist the Secretary of Human Resources on any other matter which the Secretary may refer to it. (1975, c. 929; 1977, c. 627, s. 1.)

Cross Reference. — For provisions as to delinquency prevention and youth services, codified from Session Laws 1975, c. 929, which 1975 act enacted this section and § 143B-208, see §§ 7A-289.13 through 7A-289.16.

Editor's Note. — The 1977 amendment rewrote this section, which formerly provided for the Technical Advisory Committee on Delinquency Prevention and Youth Services.

This Article was enacted by Session Laws 1975, c. 929, as §§ 143B-206 and 143B-207. The remainder of Session Laws 1975, c. 929, enacted as §§ 143B-204, 143B-205, and 143B-208 to 143B-210, is codified as §§ 7A-278 and 7A-289.13 to 7A-289.16.

§ 143B-208. Composition of Committee; terms; vacancies; meetings; expenses, etc. — The Youth Services Advisory Committee shall consist of 11 members. The Governor shall appoint five members: one person who represents a private delinquency prevention program and four concerned citizens who have some knowledge about juvenile delinquency, community-based services, and training schools. Two members shall be the Director of the Administrative Office of the Courts and the Superintendent of Public Instruction or their designees.

Four members shall be appointed from the General Assembly, two by the Speaker of the House of Representatives and two by the President of the Senate, who shall be members of the General Assembly with an interest in youth problems.

Initial appointments to the Committee shall be made as soon as practical after June 20, 1977, but no later than July 1, 1977, for terms that expire on July 1, 1979. Thereafter, the appointment of members shall be made as provided above for terms of two years. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Committee shall meet at least once in each quarter and may hold special meetings at any time and place within the State on the call of the chairman or upon the written request of five members. A majority of the Committee members shall constitute a quorum for the transaction of business. The Governor shall select the chairman who shall serve at the pleasure of the Governor. The Committee shall elect a vice-chairman who shall serve for a term of one year.

The members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The Governor shall have the power to remove any member of the Committee from office for misfeasance, malfeasance or nonfeasance in accordance with G.S. 143B-16.

All necessary clerical and other services required by the Committee shall be supplied by the Secretary of Human Resources. (1975, c. 929; 1977, c. 627, s. 1.)

Editor's Note. — The 1977 amendment rewrote this section, which formerly provided for the Technical Advisory Committee on Delinquency Prevention and Youth Services.

Part 22. Human Tissue Advisory Council.

§ 143B-209. Creation of Council; composition; duties; meetings, etc. — (a) There is created a Human Tissue Advisory Council. There shall be 13 members of this Council, consisting of the following:

(1) A representative from each of the following institutions:
    The Bowman-Gray School of Medicine,
    The Duke University School of Medicine,
    The North Carolina Association of the Blind,
    The North Carolina Eye and Human Tissue Bank,
    The North Carolina Funeral Directors' Association,
    The North Carolina Hospital Association,
    The North Carolina Kidney Foundation,
    The North Carolina Medical Society,
    The University of North Carolina at Chapel Hill School of Medicine,
    The East Carolina University School of Medicine;
(2) One member appointed by the Speaker of the House of Representatives;
(3) One member appointed by the President of the Senate; and
(4) The Secretary of Human Resources or his representative.

The Council shall elect its chairman from among its membership.

(b) The Council shall have the duty to advise, confer with, and make recommendations to the Secretary of Human Resources relating to the establishment and conduct of the Coordinated Program for Human Tissue Donations. The Council shall meet upon the call of its chairman or upon agreement of a majority of its membership but shall meet not fewer than three times a year.

(c) The Secretary shall furnish to the Council such secretarial, clerical and other services as he deems necessary. Members of the Council shall serve without compensation but shall be reimbursed for travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1975, c. 974.)

Part 23. North Carolina Drug Commission.

§ 143B-210. North Carolina Drug Commission — creation; powers and duties. — There is hereby created the North Carolina Drug Commission of the Department of Human Resources, which is designated as the single State agency to coordinate all State efforts relating to drug abuse prevention, education, control, treatment, and rehabilitation, and which shall have the following functions and duties:

(1) To advise the Department in the coordination of all State efforts related to drug abuse prevention, education, control, treatment, and rehabilitation to the end that the effort to control drug abuse shall be efficiently and effectively administered and duplicating and overlapping efforts eliminated;

(2) To review all requests by non-State agencies to federal agencies for funds to finance drug abuse prevention, education, control, treatment, or rehabilitation programs, with the requirement that such federal funds may be spent within the State of North Carolina only when approved by the North Carolina Drug Commission except in those instances in which requirements for approval by the Drug Commission violate federal law or regulation;

(3) To advise in the coordination of the State's efforts with the efforts of local and municipal governments within the State and with the efforts of other states and the federal government;

(4) To assist private agencies and community organizations by providing needed coordination and information;

(5) To assist in the planning and supervision of public informational programs related to drug abuse;

(6) To assist with the formulation and coordination of programs relating to the early diagnosis, treatment, and rehabilitation of drug abusers;

(7) To assist with the formulation and coordination of training and informational programs for State employees and others;

(8) To advise in the coordination of the State's efforts to obtain federal funds available for drug abuse programs;

(9) To establish standards and adopt rules and regulations:

  a. For the licensing of drug treatment facilities as provided by G.S. 90-109;

  b. Relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as provided by G.S. 90-100;

  c. As may be required by the federal government but not inconsistent with the laws of this State for grants-in-aid for drug abuse prevention, education, control, treatment and rehabilitation purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;

(10) To advise the Secretary of Human Resources upon any matter the Secretary may refer to it. (1977, c. 667, s. 2.)

§ 143B-211. North Carolina Drug Commission — review of programs; State Plan for Drug Abuse Prevention. — All drug abuse prevention, education, treatment, rehabilitation and evaluation programs which are implemented after June 30, 1977, with appropriated moneys from the North Carolina General Assembly or the United States Congress shall be implemented only after review by the North Carolina Drug Commission and approval by the Secretary of Human Resources. Before any agency or organization, public or private, shall receive approval for program implementation from the Secretary, the Commission must make a finding that such programs are consonant with the North Carolina State Plan for Drug Abuse Prevention. (1977, c. 667, s. 2.)

§ 143B-212. North Carolina Drug Commission — members; selection; quorum; compensation. — The North Carolina Drug Commission of the Department of Human Resources shall consist of the following 21 voting members: the Attorney General or his designee, the Executive Officer of the State Board of Pharmacy, the Secretary of Correction or his designee, the Superintendent of Public Instruction or his designee, the Chairman of the Board of Governors of the North Carolina University System or his designee and the following persons who shall serve for a term of two years commencing July 1 of each odd-numbered year: a member of the North Carolina Board of Medical Examiners appointed by the Board of Medical Examiners, a member of the North Carolina State Board of Dental Examiners appointed by the Board of Dental Examiners, a representative of the North Carolina Hospital Association appointed by said association's governing body, a member of the North Carolina House of Representatives appointed by the Speaker of the House of Representatives, a member of the North Carolina Senate appointed by the President Pro Tempore of the Senate, and 11 persons appointed by the Governor. The following persons shall serve as ex officio members of the Commission without vote: the directors of the following divisions of the Department of Human Resources or their designees: youth services, mental health, health, and vocational rehabilitation.

The Governor shall select his appointees to include representation for (i) nongovernmental organizations and local public agencies concerned directly or indirectly with drug abuse, such as groups in frequent contact with drug abusers, local citizens groups, employee groups, labor and management, other provider, consumer, and consumer advocate groups, local elected officials, courts, local law-enforcement agencies, and (ii) the minority, poverty, and major population groups which are significantly affected by the problems of drug abuse and which are to be served under the comprehensive State plan for drug abuse. The Commission shall be so constituted as to give representation to different geographical areas of the State.

Notwithstanding the provisions of G.S. 143B-13(a) relating to existing Commission members, the Governor shall appoint the initial members of the Drug Commission in accordance with the foregoing membership requirements.

At the end of the respective terms of office of the initial members of the Commission, the appointment of their successors, with the exception of those from State agencies, shall be for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973 with the exception that the provision of G.S. 143B-13(c) shall only apply to State employees and shall not apply to other members of the Commission.

The Governor shall designate a member of the Commission to serve as chairman at the pleasure of the Governor.

Legislative members of the Commission shall be compensated in accordance with the provisions of G.S. 120-3.1. Public members of the Commission shall be compensated in accordance with the provisions of G.S. 138-5. State officers or employees who are members of the Commission shall be compensated in accordance with the provisions of G.S. 138-6.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Human Resources. (1977, c. 667, s. 2.)

Part 24. North Carolina Council for the Hearing Impaired.

§ 143B-213. North Carolina Council for the Hearing Impaired — responsibilities of Council. — There is hereby created the North Carolina Council for the Hearing Impaired of the Department of Human Resources, which shall have the following duties:

(1) To advocate services affecting hearing impaired individuals in the areas of public services, health care, and educational opportunity;

(2) To act as a bureau of information for the hearing impaired to State agencies and public institutions providing health care and educational services to the hearing impaired, to local agencies and programs;

(3) To serve as an advisory body to the Secretary of the Department of Human Resources on the needs of the hearing impaired by preparing an annual report which reviews the status of all State services to the hearing impaired within North Carolina, and to recommend priorities to the Department for the development and coordination of services to this population. (1977, c. 991, s. 1.)

§ 143B-214. North Carolina Council for the Hearing Impaired — members. — (a) The North Carolina Council for the Hearing Impaired shall consist of 18 members as follows: five representatives of the Department of Human Resources to be designated by the Secretary of Human Resources from the areas of health services, mental health services, social services, the North Carolina Schools for the Deaf, and vocational rehabilitation services; one representative of the Department of Public Instruction, to be designated by the superintendent of Public Instruction, from the area of exceptional children; the Director of the Employment Security Commission, or his designee; one representative of the Department of Administration to be designated by the Secretary of the Department of Administration from the area of special personnel projects; the President of the North Carolina Association of the Deaf, or his designee; the President of the North Carolina Registry of Interpreters for the Deaf, or his designee; the President of the North Carolina Parents Association of the Deaf, or his designee; five additional members who are hearing impaired to be appointed by the Governor from nominations submitted by the North Carolina Association of the Deaf; one member of the North Carolina House of Representatives to be appointed by the Speaker of the House; one member of the North Carolina Senate to be appointed by the President of the Senate. Legislative members shall be appointed for terms of two years. The five hearing impaired members appointed by the Governor and the three representatives of consumer organizations shall serve on the Council for terms of four years, provided that [with respect to] members initially appointed, the Governor shall designate two members of the members initially appointed who shall serve terms of five years, two who shall serve terms of four years, two who shall serve terms of three years and two who shall serve terms of two years.

(b) The terms of the members first appointed shall commence July 1, 1977. At the expiration of the term of any member of the Council, his successor shall be appointed for a term of four years except for the members of the House and the Senate who shall serve terms of two years.

Vacancies occurring other than by expiration of term in the membership of the Council shall be filled by the Governor, the Speaker of the House, the Lieutenant Governor or the appropriate appointing authority. No person shall be eligible to serve more than two successive terms other than the representatives of the above named State agencies. (1977, c. 991, s. 1.)

§ 143B-215. North Carolina Council for the Hearing Impaired — chairman; reimbursement of members. — The chairman of the Council shall be designated by the Secretary of Human Resources from the appointed members of the Council, and shall hold this office for not more than four years. The Council shall meet at the call of the chairperson, but not less than four times a year.

The members of the Council shall be reimbursed for actual and necessary expenses incurred in the performance of their duties in accordance with G.S. 138-5. (1977, c. 991, s. 1.)

§ 143B-216. North Carolina Council for the Hearing Impaired — State Coordinator; duties. — (a) There shall be established the position of State Coordinator of Services for the Hearing Impaired who shall be the chief executive officer of the Council. The State Coordinator shall be responsible to the Secretary of Human Resources.

(b) The Coordinator, with the advice of the Council, and as directed by the Secretary of Human Resources shall:

(1) Plan and direct the establishment of at least one community service center for the hearing impaired in each of the Department of Human Resources regions in North Carolina, and directly supervise the activities of these centers;

(2) Promote accessibility of all governmental services to hearing impaired citizens in North Carolina including those hearing impaired persons with multiple disabilities;

(3) Identify agencies, both public and private which provide community services, evaluate the extent to which they make services available to hearing impaired people, and cooperate with the agencies in coordinating and extending these services;

(4) Provide for the mutual exchange of ideas and information on services for hearing impaired people between federal, State and local governmental agencies, and private organizations and individuals;

(5) Survey the needs of the hearing impaired population in North Carolina, and assist the North Carolina Council for the Hearing Impaired in the preparation of the annual report to the Secretary of Human Resources;

(6) Maintain a listing of persons qualified in various types of interpreting, and make this information available to local, State, federal and private organizations;

(7) Promote the training of interpreters for the hearing impaired to a level which will enable them to meet national and/or State certification requirements;

(8) Serve as an advocate for the rights of hearing impaired people.

(c) In selecting the State Coordinator of Community Services for the Deaf, the Secretary of Human Resources shall select an individual who is fluent in the American sign language of the deaf and shall give consideration and priority to qualified applicants who are hearing impaired.

(d) The Secretary of the Department of Human Resources is authorized to arrange for clerical or other assistance as may be required by the Council. (1977, c. 991, s. 1.)

§ 143B-216.1. North Carolina Council for the Hearing Impaired — annual report. — The North Carolina Council for the Hearing Impaired shall make an annual report to the Secretary of Human Resources, as described in G.S. 143B-213. (1977, c. 991, s. 1.)

§ 143B-216.2. North Carolina Council for the Hearing Impaired — assistance of other agencies. — The Council may request and shall receive from any department, division, board, bureau, commission, or agency of the State or of any political subdivision thereof such assistance and data as might be needed to enable it to properly carry out its activities under this Article. (1977, c. 991, s. 1.)

§ 143B-216.3. North Carolina Council for the Hearing Impaired — plan for community services for hearing impaired. — The Secretary of Human Resources shall develop a short-range plan during the 1977-1979 biennium for implementing community services for the hearing impaired based upon recommendations of the State Council for the Hearing Impaired. The Secretary shall insure that long-range planning is conducted which shall include a description of the locations and geographic service areas for such centers, the personnel needs, and strategies for coordinating service providers at State and local levels having contact with the deaf and hearing impaired population. (1977, c. 991, s. 1.)

§ 143B-216.4. North Carolina Council for the Hearing Impaired — functions of service centers. — The purposes of community service centers for the hearing impaired shall be as follows:

(1) To inform hearing impaired persons and their families of their rights to services offered locally and to coordinate their referral to the appropriate organization;

(2) To coordinate communication between hearing impaired persons and the desired agency or organization, and to promote the accessibility of community services to hearing impaired persons;

(3) To coordinate the provision of interpreting services to hearing impaired persons in community colleges and technical institutes;

(4) To promote expanded adult educational opportunities for hearing impaired persons in community colleges and technical institutes;

(5) To coordinate the provision of instruction in sign language to persons in community agencies;

(6) To inform interested staff of community and professional organizations about the nature of deafness and the capabilities of hearing impaired persons;

(7) To provide services to families and employers of hearing impaired persons, and to agencies which provide services to the hearing impaired;

(8) To serve as an advocate for the rights and needs of people with hearing impairments, including hearing-impaired persons having multiple disabilities (i.e., deaf-blind);

(9) To provide services to hearing impaired persons regardless of income, age, or employability;

(10) To help hearing impaired citizens to become self-sufficient in meeting their needs in the community. (1977, c. 991, s. 1.)

§ 143B-216.5. North Carolina Council for the Hearing Impaired — receipt of moneys. — (a) The Department of Human Resources may receive moneys from any source, including federal funds, gifts, grants, and bequests which shall be expended for the purposes designated in this Part.

(b) The Secretary of the Department of Human Resources is hereby authorized to designate an existing division with the Department of Human Resources to provide statewide services to the hearing impaired as specified in this Article. (1977, c. 991, s. 1.)

Part 25. Nutrition Advisory Committee.

§ 143B-216.6. Nutrition Advisory Committee — appointment; terms; vacancies; per diem, etc.; chairman. — To assist the Secretary of the Department of Human Resources in carrying out these duties [his duties under G.S. 130-9.3], the Governor shall appoint a Nutrition Advisory Committee, composed of eight members as follows: one from the field of agriculture, one from the field of economics, one from the field of education, one from the practice of medicine, one from the food industry, one from the field of social services, and one member at large. Each member shall hold office for a term of two years, commencing on September 1, 1973, and biennially thereafter and until his successor is appointed, except that the term of the members first taking office shall expire, as designated at the time of appointment, four at the end of the first year, and four at the end of the second year. Any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Committee members shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5. The Governor shall designate one member of the Committee to serve as chairman at his pleasure. (Resolution 112, 1973, p. 1413.)

§ 143B-216.7. Nutrition Advisory Committee — duties and powers. — The Committee shall advise the Secretary concerning the execution of the duties stated above. It may request any information relevant to nutrition from all State departments, agencies and divisions and said departments, agencies and divisions shall comply with the request. (Resolution 112, 1973, p. 1413.)

ARTICLE 4.

Department of Revenue.

Part 1. General Provisions.

§ 143B-217. Department of Revenue — creation. — There is hereby recreated and reestablished a department to be known as the "Department of Revenue" with the organization, duties, functions, and powers defined in the Executive Organization Act of 1973. (1973, c. 476, s. 184.)

§ 143B-218. Department of Revenue — duties. — It shall be the duty of the Department to collect and account for the State's tax funds, to insure uniformity of administration of the tax laws and regulations, to conduct research on revenue matters, and to exercise general and specific supervision over the valuation and taxation of property throughout the State. (1973, c. 476, s. 185.)

§ 143B-219. Department of Revenue — functions. — (a) The functions of the Department of Revenue shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all executive functions of the State in relation to revenue collection, tax research, tax settlement, and property tax supervision including those prescribed powers, duties and functions enumerated in Article 16 of Chapter 143A of the General Statutes of this State.

(b) All functions, powers, duties, and obligations heretofore vested in any agency enumerated in Article 16 of Chapter 143A of the General Statutes are hereby transferred to and vested in the Department of Revenue, except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

(1) The Commissioner and Department of Revenue,
(2) The Department of Tax Research, and
(3) The State Board of Assessment. (1973, c. 476, s. 186.)

Editor's Note. — Article 16 of Chapter 143A was repealed by Session Laws 1973, c. 476, which enacted this Chapter.

§ 143B-220. Department of Revenue — head. — The Secretary of Revenue shall be the head of the Department. (1973, c. 476, s. 187.)

§ 143B-221. Department of Revenue — organization. — The Department of Revenue shall be organized initially to include the Property Tax Commission, the Division of Inheritance and Gift Tax, Division of Privilege License, Beverage and Cigarette Tax, Division of Corporate Income and Franchise Tax, Division of Individual Income Tax, Division of Sales and Use Tax, Division of Intangibles Tax, Division of Gasoline Tax, Division of Audit and Collection, Division of Accounts, Division of Planning and Processing, the Division of Tax Research, the Ad Valorem Tax Division, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973.

The Secretary of Revenue may create and appoint committees and councils to consult with and advise him and the subordinate officers of the Department on matters relating to the duties, responsibilities, or functions of the Department; and he may disband any such committee or council at his pleasure. (1973, c. 476, s. 188.)

Part 2. Property Tax Commission.

§ 143B-222. Property Tax Commission — creation, powers and duties. — There is hereby created the Property Tax Commission with the authority to hear and decide appeals concerning the appraisal of the property of public service companies (as defined in G.S. 105-333) and to act as a State board of equalization and review for the valuation and taxation of property in the State as provided for in G.S. 105-290. The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations heretofore adopted by the State Board of Assessment shall remain in full force and effect unless and until repealed or superseded by action of the Property Tax Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Revenue. (1973, c. 476, s. 189.)

§ 143B-223. Property Tax Commission — members; selection; quorum; compensation. — The Property Tax Commission of the Department of Revenue shall consist of five members with three appointed by the Governor and one each appointed by the Lieutenant Governor and the Speaker of the House. The initial members of the Commission shall be the appointed members of the State Board of Assessment who shall serve for a period equal to the remainder of their current term on the State Board of Assessment, one of whose term expires July 1, 1973, and three of whose terms expire July 1, 1975. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for staggered terms for four years and until their successors are appointed and qualify. To achieve the staggered terms, the Governor shall make two appointments on July 1, 1973, each for four years and one appointment on July 1, 1975, for four years. The Lieutenant Governor and the Speaker of the House shall make their respective appointments on July 1, 1975, for four years. Thereafter, the appointment of their successors shall be for terms of four years.

Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the right to remove any member for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Revenue. (1973, c. 476, s. 190.)

§ 143B-224. Property Tax Commission — officers. — The Property Tax Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 476, s. 191.)

§ 143B-225. Property Tax Commission — regular and special meetings. —The Property Tax Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least three members. At least 15 days' reasonable notice shall be given to each member with respect to each special meeting. (1973, c. 476, s. 192.)

§§ 143B-226 to 143B-245: Reserved for future codification purposes.

ARTICLE 5.

Department of Military and Veterans Affairs.

Part 1. General Provisions.

§§ 143B-246 to 143B-251: Repealed by Session Laws 1977, c. 70, s. 33.

Cross Reference. — As to transfer of the Division of Veterans Affairs of the Department of Military and Veterans Affairs to the Department of Administration, see § 143A-96.1.

Part 2. Veterans Affairs Commission.

§§ 143B-252, 143B-253: Transferred to §§ 143B-399, 143B-400 by Session Laws 1977, c. 70, ss. 24, 25.

Part 3. Energy Division.

§§ 143B-254, 143B-255: Repealed by Session Laws 1977, c. 23, s. 3.

Cross Reference. — For present provisions as to the Energy Division, now in the Department of Commerce, see §§ 143B-448, 143B-449.

§§ 143B-256 to 143B-259: Reserved for future codification purposes.

ARTICLE 6.

Department of Correction.

Part 1. General Provisions.

§ 143B-260. Department of Correction — creation. — There is hereby created and established a department to be known as the Department of Correction with the organization, powers, and duties hereafter defined in the Executive Organization Act of 1973. (1973, c. 1262, s. 2.)

Suits against Department. — The State Prison Department (now State Department of Correction) was created as the State's agency for the performance of an essentially governmental function. A suit against the Department eo nomine is essentially a suit against the State. Hence, absent constitutional or legislative authority therefor, one cannot maintain such a suit. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960), decided under former § 148-1.

§ 143B-261. Department of Correction — duties. — It shall be the duty of the Department to provide the necessary custody, supervision, and treatment to control and rehabilitate criminal offenders and juvenile delinquents and thereby to reduce the rate and cost of crime and delinquency. (1973, c. 1262, s. 3.)

§ 143B-261.1. Department of Correction — rules and regulations. — The Department of Correction shall adopt rules and regulations related to the conduct, supervision, rights and privileges of persons in its custody or under its supervision. Such rules and regulations shall be filed with and published by the office of the Attorney General and shall be made available by the Department for public inspection. The rules and regulations shall include a description of the organization of the Department. A description or copy of all forms and instructions used by the Department, except those relating solely to matters of internal management, shall also be filed with the office of the Attorney General. (1975, c. 721, s. 2.)

§ 143B-262. Department of Correction — functions. — (a) The functions of the Department of Correction shall comprise except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina all functions of the executive branch of the State in relation to corrections and the rehabilitation of adult offenders and juvenile delinquents including detention, parole, and aftercare supervision, and further including those prescribed powers, duties, and functions enumerated in Article 14 of Chapter 143A of the General Statutes and other laws of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in the Department of Social Rehabilitation and Control and any agency enumerated in Article 14 of Chapter 143A of the General Statutes and laws of this State are hereby transferred to and vested in the Department of Correction except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

(1) The State Department of Correction and Commission of Correction,
(2) The State Board of Youth Development,

(3) The State Probation Commission,
(4) The State Board of Paroles,
(5) The Interstate Agreement on Detainers, and
(6) The Uniform Act for Out-of-State Parolee Supervision. (1973, c. 1262, s. 4.)

Editor's Note. — Article 14 of Chapter 143A, referred to in this section, was repealed by Session Laws 1973, c. 1262, s. 10. The same 1973 act enacted this Article.

§ 143B-263. Department of Correction — head. — The Secretary of Correction shall be the head of the Department. (1973, c. 1262, s. 5.)

§ 143B-264. Department of Correction — organization. — The Department of Correction shall be organized initially to include the Parole Commission, the Board of Correction, the Division of Prisons, the Division of Youth Development, the Division of Adult Probation and Parole, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1973, c. 1262, s. 6.)

Part 2. Board of Correction.

§ 143B-265. Board of Correction — duties and responsibilities; members; selection; compensation; meetings; quorum; services. — The Board of Correction shall consider and advise the Secretary of Correction upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Correction in the development of major programs and recommend priorities for the programs within the Department.

The Board of Correction shall have such other responsibilities and shall perform such other duties as may be specifically given to it by the Secretary of Correction.

The Board of Correction shall consist of nine members appointed by the Governor to serve at his pleasure. One member shall be a psychiatrist or a psychologist, one an attorney with experience in the criminal courts, one a judge in the General Court of Justice, five members appointed at large, and the Secretary of Correction who shall be a member and chairman ex officio. The initial composition of the Board of Correction shall include the chairman of the present State Probation Commission, the chairman of the present State Commission of Correction, and the chairman of the present State Board of Youth Development.

Members of the Board shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

The Board of Correction shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of its chairman.

A majority of the Board shall constitute a quorum for the transaction of business.

All clerical and other services required by the Board shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 7.)

Part 3. Parole Commission.

§ 143B-266. Parole Commission — creation, powers and duties. — (a) There is hereby created a Parole Commission of the Department of Correction with the authority to grant paroles, including both regular and temporary paroles, to persons held by virtue of any final order or judgment of any court of this State as provided in Chapter 148 of the General Statutes and laws of the State of North

Carolina. The Commission shall also have authority to revoke, terminate, and suspend paroles of such persons (including persons placed on parole on or before the effective date of the Executive Organization Act of 1973) and to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency.

(b) All releasing authority previously resting in the Commissioner and Commission of Correction with the exception of authority for extension of the limits of the place of confinement of a prisoner contained in G.S. 148-4 is hereby transferred to the Parole Commission. Specifically, such releasing authority includes work release (G.S. 148-33.1), indeterminate-sentence release (G.S. 148-42), and release of youthful offenders (G.S. 148-49.8), provided the individual considered for work release or indeterminate-sentence release shall have been recommended for release by the Secretary of Correction or his designee.

(c) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, in accordance with which prisoners eligible for parole consideration may have their cases reviewed and investigated and by which such proceedings may be initiated and considered. All rules and regulations heretofore adopted by the Board of Paroles shall remain in full force and effect unless and until repealed or superseded by action of the Parole Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Correction.

(d) The Commission is authorized and empowered to impose as a condition of parole that restitution or reparation be made by the prisoner in accordance with the provisions of G.S. 148-57.1. The Commission is further authorized and empowered to make restitution or reparation a condition of work release in accordance with the provisions of G.S. 148-33.2. (1973, c. 1262, s. 8; 1975, c. 220; 1977, c. 614, s. 5; c. 732, s. 5.)

Editor's Note. — The 1975 amendment deleted "in any prison, jail, or penal institution of this State or its political subdivisions" following "court of this State" in the first sentence of subsection (a).

The first 1977 amendment added subsection (d).

The second 1977 amendment substituted "work release or indeterminate-sentence release" for "work release, indeterminate-sentence release, and release of youthful offenders" in the second sentence of subsection (b).

G.S. 148-49.8, referred to in the second sentence of subsection (b), was repealed by Session Laws 1977, c. 732, s. 1. For present provisions covering the subject matter of the repealed section, see § 148-49.15.

Session Laws 1977, c. 614, s. 9, contains a severability clause.

Section 148-33.1(b) read in conjunction with subsection (b) of this section makes it clear that all releasing authority for work-release privileges for any inmate serving a term greater than five years rests ultimately in the Parole Commission. State v. Walker, 31 N.C. App. 199, 228 S.E.2d 772 (1976).

§ 143B-267. Parole Commission — members; selection; removal; chairman; compensation; quorum; services. — The Parole Commission shall consist of five full-time members, and the Secretary of Correction who shall serve as an ex officio, nonvoting member. The five full-time members shall be appointed by the Governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission. The terms of office of the five members presently serving on the Commission shall expire on June 30, 1977. Thereafter, the terms of office of persons appointed by the Governor as members of the Commission shall be for four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, removal, death or disability of a full-time member shall be for the balance of the unexpired term only.

The Governor shall have the authority to remove any member of the Commission from office for misfeasance, malfeasance or nonfeasance, pursuant to the provisions of G.S. 143B-13. The Governor shall designate a full-time member of the Commission to serve as chairman of the Commission at the pleasure of the Governor.

A majority of the full-time members of the Commission shall constitute a quorum for the transaction of business.

The full-time members of the Commission shall receive the salary fixed by the Governor and approved by the Advisory Budget Commission and shall receive necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-6.

All clerical and other services required by the Commission shall be supplied by the Secretary of Correction. (1973, c. 1262, s. 9; 1977, c. 704, s. 1.)

Editor's Note. — The 1977 amendment rewrote the section.

§§ 143B-268 to 143B-274: Reserved for future codification purposes.

ARTICLE 7.

Department of Natural Resources and Community Development.

Part 1. General Provisions.

§ 143B-275. Department of Natural Resources and Community Development — creation. — There is hereby recreated and reconstituted a department known as the Department of Natural Resources and Community Development with the organization, powers, and duties defined in the Executive Organization Act of 1973. (1973, c. 1262, s. 11; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-276. Department of Natural Resources and Community Development — duties. — It shall be the duty of the Department:

(1) To provide for the management and protection of the State's natural resources and environment;

(2) To promote and assist in the orderly development of North Carolina counties and communities; and

(3) To provide job training and promote employment for economically disadvantaged persons. (1973, c. 1262, s. 12; 1977, c. 198, s. 10; c. 771, s. 1.)

Editor's Note. — Both 1977 amendments rewrote this section. The section is set out above as it appears in the second 1977 amendatory act.

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 143B-277. Department of Natural Resources and Community Development — functions. — The Department of Natural Resources and Community Development, except as otherwise provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to the protection and management of the natural resources and environment of the State, the orderly development of North Carolina's counties and

communities, the job training of economically disadvantaged persons and the promotion of employment for economically disadvantaged persons;

(2) All of the functions, powers, duties and obligations vested in the Department of Natural and Economic Resources and in any agency, commission, board, council or sub-part of the Department of Natural and Economic Resources, all of which are hereby transferred to and vested in the Department of Natural Resources and Community Development; and

(3) All other functions, powers, duties and obligations as are conferred by this Chapter, delegated or assigned by the Governor or conferred by the Constitution and laws of this State. (1973, c. 1262, s. 13; 1977, c. 198, ss. 11, 12; c. 512, s. 6; c. 771, s. 2.)

Editor's Note. — The first 1977 amendment deleted a reference to "economic development" in subsection (a) of the section as it stood before the third 1977 amendment, and deleted references to the North Carolina Board of Science and Technology and the North Carolina National Park, Parkway, and Forest Development Commission in subsection (b) of the section as it stood before the third 1977 amendment.

The second 1977 amendment deleted a provision as to the Commercial and Sports Fisheries Advisory Board in subsection (b) of the section as it read before the third 1977 amendment.

The third 1977 amendment rewrote this section to read as set out above.

For transitional provisions applicable to the reorganization of the Department of Natural and Economic Resources as the Department of Natural Resources and Community Development, see Session Laws 1977, c. 771, ss. 16-21.

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 143B-278. Department of Natural Resources and Community Development — head. — The Secretary of Natural Resources and Community Development shall be the head of the Department. (1973, c. 1262, s. 14; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-279. Department of Natural Resources and Community Development — organization. — The Department of Natural Resources and Community Development shall be organized initially to include:

(1) The Board of Natural Resources and Community Development,
(2) The Wildlife Resources Commission,
(3) The Environmental Management Commission,
(4) The Marine Fisheries Commission,
(5) The North Carolina Mining Commission,
(6) The State Soil and Water Conservation Commission,
(7) The Sedimentation Control Commission,
(8) The Wastewater Treatment Plant Operators Certification Commission,
(9) The Earth Resources Council,
(10) The Community Development Council,
(11) The Forestry Council,
(12) The Parks and Recreation Council,
(13) The North Carolina Zoological Park Council,
(14) The Water Safety Council,
(15) The Air Quality Council,
(16) The Water Quality Council,

(17) The North Carolina Employment and Training Council,
(18) The Commercial and Sports Fisheries Committee,
(19) The John H. Kerr Reservoir Committee,
(20) The North Carolina Trails Committee,
(21) The North Carolina Land Policy Council, and

such divisions as may be established under the provisions of Article 1 of this Chapter. (1973, c. 1262, s. 15; 1977, c. 771, s. 3.)

Editor's Note. — The 1977 amendment divided this section into subdivisions, substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (1), substituted "Certification Commission" for "Commission of Certification" in subdivision (8), substituted "Community Development Council" for "Community and Economic Development" in subdivision (10), added subdivisions (17), (19), and (21), substituted "Article 1 of this Chapter" for "the Executive Organization Act of 1973" at the end of the section, and eliminated the following agencies: the North Carolina National Park, Parkway and Forest Development Council; the Science and Technology Committee; the Federal Reservoirs Local Committees; the Division of Environmental Management; the Division of Commercial and Sports Fisheries; the Division of Earth Resources; the Division of Community and Economic Development; the Division of Forest Resources; and the Division of Parks and Recreation.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 2. Board of Natural Resources and Community Development.

§ 143B-280. Board of Natural Resources and Community Development — duties; members; selection; meetings; quorum; compensation; services. — The Board of Natural Resources and Community Development shall consider and advise the Secretary of Natural Resources and Community Development upon any matter that the Secretary may refer to it. The Board shall assist the Secretary of Natural Resources and Community Development in the development of major programs and recommend priorities for programs within the Department.

The Board of Natural Resources and Community Development shall perform such other duties as may be specifically given to it.

The Board of Natural Resources and Community Development shall consist of the following 25 members. The chairman and one elected member from each of the following Commissions: the Wildlife Resources Commission, the Environmental Management Commission, and the Marine Fisheries Commission; the chairman and one elected member from each of the following Councils: the Earth Resources Council, the Community Development Council, the Forestry Council, and the Parks and Recreation Council; 10 members-at-large appointed by the Governor to serve at his pleasure; and the Secretary of Natural Resources and Community Development who shall be a member and chairman ex officio.

The Board of Natural Resources and Community Development shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of its chairman.

A majority of the Board shall constitute a quorum for the transaction of business.

Members of the Board shall receive per diem and necessary travel expenses in accordance with the provisions of G.S. 138-5.

All clerical and other services required by the Board shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 16; 1977, c. 771, ss. 4, 8.)

Editor's Note. — The 1977 amendment substituted "Community Development Council" for "Community and Economic Development Council" in the third paragraph and "Natural

Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 3. Wildlife Resources Commission.

§ 143B-281. Wildlife Resources Commission — transfer; independence preserved; appointment of Executive Director and employees. — The Wildlife Resources Commission, as contained in Chapters 75A, 113 and 143 of the General Statutes and the laws of this State, is hereby transferred to the Department of Natural Resources and Community Development. The Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of Natural Resources and Community Development and, other provisions of this Chapter notwithstanding, shall be subject to the direction and supervision of the Secretary only with respect to the management functions of coordinating and reporting. Any other provisions of this Chapter to the contrary notwithstanding, the Executive Director of the Wildlife Resources Commission shall be appointed by the Commission and the employees of the Commission shall be employed as now provided in G.S. 143-246 of the laws of this State.

Notwithstanding any provision of the Executive Organization Act of 1973 to the contrary, the Wildlife Resources Commission shall exercise all its prescribed statutory powers independently of the Secretary of Natural Resources and Community Development to the end that the independence of the Wildlife Resources Commission be preserved, the Executive Organization Act of 1973 shall not be construed as amending or repealing the provisions of this section. (1973, c. 1262, s. 17; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and second sentences of the first paragraph and in the second paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 4. Environmental Management Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-282. Environmental Management Commission — creation; powers and duties. — There is hereby created the Environmental Management Commission of the Department of Natural Resources and Community Development with the power and duty to promulgate rules and regulations to be followed in the protection, preservation, and enhancement of the water and air resources of the State.

(1) Within the limitations of G.S. 143-215.9 concerning industrial health and safety, the Environmental Management Commission shall have the following powers and duties:

a. To grant a permit or temporary permit, to modify or revoke a permit, and to refuse to grant permits pursuant to G.S. 143-215.1 and G.S. 143-215.108 with regard to controlling sources of air and water pollution;

b. To issue a special order pursuant to G.S. 143-215.2(b) and G.S. 143-215.110 to any person whom the Commission finds responsible for causing or contributing to any pollution of water within such watershed or pollution of the air within the area for which standards have been established;
c. To conduct and direct that investigations be conducted pursuant to G.S. 143-215.3 and G.S. 143-215.108(b)(5);
d. To conduct public hearings, institute actions in superior court, and agree upon or enter into settlements, all pursuant to G.S. 143-215.3;
e. To direct the investigation of any killing of fish and wildlife pursuant to G.S. 143-215.3;
f. To consult with any person proposing to construct, install, or acquire an air or water pollution source pursuant to G.S. 143-215.3 and G.S. 143-215.111;
g. To encourage local government units to handle air pollution problems and to provide technical and consultative assistance pursuant to G.S. 143-215.3 and G.S. 143-215.112;
h. To review and have general oversight and supervision over local air pollution control programs pursuant to G.S. 143-215.3 and G.S. 143-215.112;
i. To declare an emergency when it finds a generalized dangerous condition of water or air pollution pursuant to G.S. 143-215.3;
j. To render advice and assistance to local government regarding floodways pursuant to G.S. 143-215.56;
k. To declare and delineate and modify capacity use areas pursuant to G.S. 143-215.13;
l. To grant permits for water use within capacity use areas pursuant to G.S. 143-215.15;
m. To direct that investigations be conducted when necessary to carry out duties regarding capacity use areas pursuant to G.S. 143-215.19;
n. To approve, disapprove and approve subject to conditions all applications for dam construction pursuant to G.S. 143-215.28; to require construction progress reports pursuant to G.S. 143-215.29;
o. To halt dam construction pursuant to G.S. 143-215.29;
p. To grant final approval of dam construction work pursuant to G.S. 143-215.30;
q. To have jurisdiction and supervision over the maintenance and operation of dams pursuant to G.S. 143-215.31;
r. To direct the inspection of dams pursuant to G.S. 143-215.32;
s. To modify or revoke any final action previously taken by the Commission pursuant to G.S. 143-214.1 and G.S. 143-215.107; and
t. To have jurisdiction and supervision over oil pollution pursuant to Article 21A of Chapter 143.

(2) The Environmental Management Commission shall have the power and duty to establish standards and adopt rules and regulations:
a. For air quality standards, emission control standards and classifications for air contaminant sources pursuant to G.S. 143-215.107;
b. For water quality standards and classifications pursuant to G.S. 143-214.1 and G.S. 143-215;
c. To implement water and air quality reporting pursuant to G.S. 143-215.68;
d. To be applied in capacity use areas pursuant to G.S. 143-215.14;
e. To implement the issuance of permits for water use within capacity use areas pursuant to G.S. 143-215.20;

f. For the protection of sand dunes pursuant to Chapter 104B of the General Statutes of North Carolina; and

g. For the protection of the land and the waters over which this State has jurisdiction from pollution by oil, oil products and oil by-products pursuant to Article 21A of Chapter 143.

(3) The Commission is authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for water and air resources purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(4) The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural Resources and Community Development.

(5) The Environmental Management Commission shall have the power to adopt regulations with respect to any State laws administered under its jurisdiction so as to accept evidence of compliance with corresponding federal law or regulation in lieu of a State permit, or otherwise modify a requirement for a State permit, upon findings by the Commission, and after public hearings, that there are:

a. Similar and corresponding or more restrictive federal laws or regulations which also require an applicant to obtain a federal permit based upon the same general standards or more restrictive standards as the State laws and regulations require; and

b. That the enforcement of the State laws and regulations would require the applicant to also obtain a State permit in addition to the required federal permit; and

c. That the enforcement of the State laws and regulations would be a duplication of effort on the part of the applicant; and

d. Such duplication of State and federal permit requirements would result in an unreasonable burden not only on the applicant, but also on the citizens and resources of the State. (1973, c. 1262, s. 19; 1975, c. 512; 1977, c. 771, s. 4.)

Editor's Note. — The 1975 amendment added subdivision (5).

The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (4).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-283. Environmental Management Commission — members; selection; removal; compensation; quorum; services. — (a) The Environmental Management Commission shall consist of 13 members appointed by the Governor. The Governor shall select the members so that the membership of the Commission shall consist of:

(1) One who shall be a licensed physician;

(2) One who shall, at the time of appointment, be actively connected with the Commission for Health Services or local board of health or have had experience in water and air pollution control activities;

(3) One who shall, at the time of appointment, be actively connected with or have had experience in agriculture;

(4) One who shall, at the time of appointment, be a registered engineer experienced in the planning or conservation of water or air resources, or planning of water or sewer systems, or having experience in the field of industrial water supply or water and air pollution control, or have

had practical experience in water supply and water and air pollution control problems of municipal government;

(5) One who shall, at the time of appointment, be actively connected with or have had experience in the fish and wildlife activities of the State;

(6) One who shall, at the time of appointment, be actively connected with or knowledgeable in the groundwater industry;

(7) Five members interested in water and air pollution control, appointed from the public at large;

(8) One who shall, at the time of appointment, be actively connected with industrial production or have had experience in the field of industrial air and water pollution control; and

(9) One who shall, at the time of appointment, be actively connected with or have had experience in pollution control problems of municipal or county government. The Governor, by executive order, shall promulgate criteria for determining the eligibility of persons under this section and for this purpose, may promulgate the rules, regulations or guidelines established by any federal agency interpreting and applying equivalent provisions of law.

(b) Members so appointed shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications. The initial members of the Environmental Management Commission shall be those members of the present Board of Water and Air Resources who shall meet the above standards for membership on the Environmental Management Commission and who shall serve on the Environmental Management Commission for a period equal to the remainder of their current terms on the Board of Water and Air Resources, four of whose appointments expire June 30, 1975, five of whose appointments expire June 30, 1977, and four of whose appointments expire June 30, 1979. Any initial appointment to replace a member of the present Board of Water and Air Resources who does not meet the above standards for membership on the Environmental Management Commission shall be for a period equal to the replaced member's unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 20; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-284. Environmental Management Commission — officers. — The Environmental Management Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the

Commission and shall serve for a term of two years or until the expiration of his regularly appointed term whichever comes first. (1973, c. 1262, s. 21.)

§ 143B-285. Environmental Management Commission — meetings. — The Environmental Management Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 22.)

Part 5. Marine Fisheries Commission.

§ 143B-286. Marine Fisheries Commission — creation; powers and duties. — There is hereby created the Marine Fisheries Commission of the Department of Natural Resources and Community Development with the power and duty to adopt rules and regulations to be followed in the protection, preservation, and enhancement of the commercial and sports fisheries resources of the State.

(1) The Marine Fisheries Commission shall have the following powers and duties:

a. The Commission is authorized to authorize, license, regulate, prohibit, prescribe, or restrict all forms of marine and estuarine resources in coastal fishing waters with respect to:

1. Time, place, character, or dimensions of any methods or equipment that may be employed in taking fish.
2. Seasons for taking fish.
3. Size limits on and maximum quantities of fish that may be taken, possessed, bailed to another, transported, bought, sold, or given away.

b. To adopt regulations and take all steps necessary to develop and improve the cultivation, harvesting, and marketing of oysters and clams in North Carolina both from public grounds and private beds as provided in G.S. 113-201;

c. To close areas of public bottoms under coastal fishing waters for such time as may be necessary in any program of propagation of shellfish as provided in G.S. 113-204;

d. In the interest of conservation of the marine and estuarine resources of North Carolina, the Commission may institute an action in the superior court to contest the claim of title or claimed right of fishery in any navigable waters of North Carolina registered with the Department as provided in G.S. 113-206(d);

e. To delegate to the Secretary of Natural Resources and Community Development the authority by proclamation to suspend or implement, in whole or in part, particular regulations of the Commission which may be affected by variable conditions as provided in G.S. 113-221(e);

f. To make reciprocal agreements with other jurisdictions respecting any of the matters governed in this [Subchapter] as provided by G.S. 113-223;

g. To make relevant provisions of federal laws and regulations as State regulations pursuant to G.S. 113-228; and

h. To control activities in coastal wetlands as provided in G.S. 113-230.

(2) The Marine Fisheries Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. Implementing the provisions of Subchapter IV of Chapter 113 as provided in G.S. 113-134 of the General Statutes of the State of North Carolina.

b. For the disposition of confiscated property as set forth in G.S. 113-137;
c. Governing all license requirements and taxes prescribed in Chapter 113, Article 14;
d. Governing the importation and exportation of fish, and equipment that may be used in taking or processing fish, as necessary to enhance the conservation of marine and estuarine resources of North Carolina as provided in G.S. 113-160;
e. Governing the possession, transportation and disposition of seafood as provided in G.S. 113-164;
f. Regarding the disposition of the young of edible fish taken incidentally and unavoidably as provided by G.S. 113-185;
g. Regarding the leasing of public grounds for oysters and clam production as provided in G.S. 113-202;
h. Governing utilization of private fisheries as provided in G.S. 113-205;
i. Regarding permits to dredge or fill as provided in G.S. 113-229; and
j. Imposing further restrictions upon the throwing of fish offal in any coastal fishing waters as provided in G.S. 113-265.

(3) The Commission is authorized to authorize, license, prohibit, prescribe, or restrict:
a. The opening and closing of coastal fishing waters, except as to inland game fish, whether entirely or only as to the taking of particular classes of fish, use of particular equipment, or as to other activities within the jurisdiction of the Department.
b. The possession, cultivation, transportation, importation, exportation, sale, purchase, acquisition, and disposition of all marine and estuarine resources and all related equipment, implements, vessels, and conveyances as necessary to implement the work of the Department in carrying out its duties as provided in G.S. 113-182.

(4) The Commission is authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for coastal resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(5) The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural Resources and Community Development. (1973, c. 1262, s. 24; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph, in paragraph e of subdivision (1), and in subdivision (5).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

The word "Subchapter" in subdivision (1)f of this section has been enclosed in brackets because this Chapter contains no Subchapters and the meaning of the reference is unclear.

§ 143B-287. Marine Fisheries Commission — members; selection; removal; compensation; quorum; services. — The Marine Fisheries Commission shall consist of 15 members appointed by the Governor. The Governor shall select the members so that all the following interests are represented:

(1) One who shall at the time of appointment be actively connected with and have experience in commercial fishing,

(2) One who shall at the time of appointment be actively connected with and have experience in wildlife or sport fishing,

(3) One who shall at the time of appointment have special training and expertise in marine ecology,
(4) One who shall at the time of appointment be actively connected with and have experience in coastal land development,
(5) One who shall at the time of appointment be actively connected with and have experience in seafood processing and distribution, and
(6) Ten at large, at least seven of whom shall at the time of appointment be residents of a legislative district which contains a county which is a part of the coastal area as that term is defined by G.S. 113A-103(2) and (3).

Members so appointed shall serve terms of office of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications.

The Governor shall have the power to remove any current member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973. The Governor shall have the authority to remove any member of the Commission appointed after July 1, 1977.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 25; 1977, c. 512, s. 1; c. 771, s. 4.)

Editor's Note. — The first 1977 amendment substituted "15" for "seven" in the first sentence of the first paragraph, rewrote subdivision (6) of the first paragraph so as to provide for 10, rather than two, at-large members, deleted the second sentence of the second paragraph, which read "Two of the initial members shall be appointed for two years, two for four years, and three for six years," inserted "current" near the beginning of the first sentence of the third paragraph and added the second sentence of the third paragraph.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 512, s. 2, provides: "The seven current members of the Marine Fisheries Commission shall serve the remainder of the terms for which they were appointed. Of the eight new at-large members whose appointments are authorized by section 1 of this act [§ 143B-287], four shall be appointed for terms ending July 1, 1979, and four shall be appointed for terms ending July 1, 1981. Thereafter each member shall be appointed for a term of six years."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-288. Marine Fisheries Commission — officers. — The Marine Fisheries Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term, whichever comes first. (1973, c. 1262, s. 26.)

§ 143B-289. Marine Fisheries Commission — meetings. — The Marine Fisheries Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. At least three of the four quarterly meetings of the Marine Fisheries Commission shall be held in the coastal area as that area is defined in G.S. 113A-103. (1973, c. 1262, s. 27; 1977, c. 512, s. 3.)

Editor's Note. — The 1977 amendment added the second sentence.

Part 6. North Carolina Mining Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-290. North Carolina Mining Commission — creation; powers and duties. — There is hereby created the North Carolina Mining Commission of the Department of Natural Resources and Community Development with the power and duty to promulgate rules and regulations for the enhancement of the mining resources of the State.

(1) The North Carolina Mining Commission shall have the following powers and duties:
   a. To act as the advisory body to the Interstate Mining Compact pursuant to G.S. 74-38(a);
   b. To adopt and modify rules and regulations to implement Chapter 74, Article 6, pursuant to G.S. 74-44(b);
   c. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61; and
   d. To promulgate rules and regulations necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.

(2) The Commission is authorized and empowered to make such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for mining resource purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall make such rules and regulations, consistent with the provisions of this Chapter. All rules and regulations adopted by the Commission shall be enforced by the Department of Natural Resources and Community Development. (1973, c. 1262, s. 29; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (3).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Subsection (a) of § 74-38, referred to in subdivision (2)a, was repealed by Session Laws 1973, c. 1262, s. 33.

§ 143B-291. North Carolina Mining Commission — members; selection; removal; compensation; quorum; services. — The North Carolina Mining Commission shall consist of nine members appointed by the Governor. The Commission shall be composed of the following: one member who is the chairman of the North Carolina State University Minerals Research Laboratory Advisory Committee; three representatives of mining industries; three representatives of nongovernmental conservation interests and two who shall represent the Environmental Management Commission and be knowledgeable in the principles of water and air resources management.

The initial members of the North Carolina Mining Commission shall be those members of the present North Carolina Mining Council who shall meet the above requirements for membership on the North Carolina Mining Commission and who shall serve on the North Carolina Mining Commission for a period equal to the remainder of their current terms on the North Carolina Mining Council. The remaining initial members shall be appointed by the Governor to staggered terms of six years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. At the expiration of each member's term, the Governor shall replace the member with a new member of like qualifications for a term of six years.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department. (1973, c. 1262, s. 30.)

§ 143B-292. North Carolina Mining Commission — officers. — The North Carolina Mining Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 1262, s. 31.)

§ 143B-293. North Carolina Mining Commission — meetings. — The North Carolina Mining Commission shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 32.)

Part 7. Soil and Water Conservation Commission.

§ 143B-294. Soil and Water Conservation Commission — creation; powers and duties. — There is hereby created the Soil and Water Conservation Commission of the Department of Natural Resources and Community Development with the power and duty to adopt rules and regulations to be followed in the development and implementation of a soil and water conservation program.

(1) The Soil and Water Conservation Commission has the following powers and duties:
  a. To approve petitions for soil conservation districts;
  b. To approve application for watershed plans; and
  c. Such other duties as specified in Chapter 139.

(2) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Soil and Water Conservation Committee shall remain in full force and effect unless and until repealed or superseded by action of the Soil and Water Conservation Commission. All rules and regulations adopted by the

Commission shall be enforced by the Department of Natural Resources and Community Development. (1973, c. 1262, s. 34; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (2).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-295. Soil and Water Conservation Commission — members; selection; removal; compensation; quorum; services. — The Soil and Water Conservation Commission of the Department of Natural Resources and Community Development shall be composed of seven members appointed by the Governor. The Commission shall be composed of the following members:

(1) The president, first vice-president, and immediate past president of the North Carolina Association of Soil and Water Conservation Districts. Vacancies arising in any of these positions shall be filled through appointment by the Governor upon the nomination by the executive committee of the North Carolina Association of Soil and Water Conservation Districts;

(2) Three supervisor members nominated by the North Carolina Association of Soil and Water Conservation Districts from its own membership representing the three major geographical regions of the State and appointed by the Governor;

(3) One member appointed at large by the Governor.

The initial members of the Commission shall be the members of the Soil Conservation Committee who shall serve for a period equal to the remainder of their current terms on the Soil Conservation Committee. At the end of the respective terms of office of the initial members of the Commission, their successors, except those members serving in an ex officio capacity, shall be appointed for terms of three years and until their successors are appointed and qualified. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 35; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in the last paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-296. Soil and Water Conservation Commission — officers. — The Soil and Water Conservation Commission shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the

Commission and shall serve for a term of two years or until the expiration of his regularly appointed term. (1973, c. 1262, s. 36.)

§ 143B-297. Soil and Water Conservation Commission — meetings. — The Soil and Water Conservation Commission shall meet at least quarterly and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least four members. (1973, c. 1262, s. 37.)

Part 8. Sedimentation Control Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-298. Sedimentation Control Commission — creation; powers and duties. — There is hereby created the Sedimentation Control Commission of the Department of Natural Resources and Community Development with the power and duty to develop and administer a sedimentation control program as herein provided.

The Sedimentation Control Commission has the following powers and duties:

(1) In cooperation with the Secretary of the Department of Transportation and Highway Safety and other appropriate State and federal agencies, develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program.

(2) Develop and adopt on or before July 1, 1974, rules and regulations for the control of erosion and sedimentation pursuant to G.S. 113A-54.

(3) Conduct public hearings pursuant to G.S. 113A-54.

(4) Assist local governments in developing erosion and sedimentation control programs pursuant to G.S. 113A-60.

(5) Assist and encourage other State agencies in developing erosion and sedimentation control programs pursuant to G.S. 113A-56.

(6) Develop recommended methods of control of sedimentation and prepare and make available for distribution publications and other materials dealing with sedimentation control techniques pursuant to G.S. 113A-54. (1973, c. 1262, s. 39; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-299. Sedimentation Control Commission — members; selection; compensation; meetings. — (a) There is hereby created in the Department of Natural Resources and Community Development the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

(1) The Secretary of the Department of Natural Resources and Community Development, who shall be chairman, and who may designate some other officer in the Department to act in his stead;

(2) A person to be nominated by the Board of the North Carolina Home Builders Association;
(3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;
(4) The president, vice-president, or general counsel of a North Carolina public utility company;
(5) The Director of the North Carolina Water Resources Research Institute;
(6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);
(7) A member of the State Soil and Water Conservation Commission;
(8) A member of the Environmental Management Commission;
(9) A soil scientist from the faculty of North Carolina State University; and
(10) Two persons who shall be representatives of nongovernmental conservation interests.

(b) Appointment. — The Commission members shall be appointed by the Governor and all initial appointments shall be made on or before August 1, 1973. All Commission members, except the person filling position number five, as specified above, shall serve staggered terms of office of four years. The person filling position number five shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as he continues as Director of the Water Resources Research Institute. The initial terms of office for members filling positions two, three, and four, as specified above, shall expire June 30, 1975; thereafter, the terms of office for members filling those positions shall be four years. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance or, in the case of members filling positions one, five, six, seven, eight, and nine, as specified above, because they no longer possess the required qualifications for membership. In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(c) Compensation. — The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. — The Commission shall meet at the call of the chairman and shall hold special meetings at the call of a majority of the members. (1973, c. 1262, s. 40; 1977, c. 771, s. 4.)

Editor's Note. — Subsection (b) of § 74-38, referred to in subdivision (6) of subsection (a), was repealed by Session Laws 1973, c. 1262, s. 33.

Section 113A-53, Subdivision (a)(1) and Subsection (b) as Amended by Session Laws 1973, c. 1417, Effective April 13, 1974. — Session Laws 1973, c. 1417, s. 2, ratified April 13, 1974, and made effective on ratification, rewrote subdivision (1) of subsection (a) of 113A-53 to read as follows:

"(1) A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;"

Session Laws 1973, c. 1417, s. 2, ratified April 13, 1974, and effective on ratification, amended subsection (b) of § 113A-53 to read as follows:

"(b) Appointment. — The Commission members shall be appointed by the Governor and all initial appointments shall be made on or before August 1, 1973. All Commission members, except the person filling position number five, as specified in G.S. 113A-53(a), above, shall serve staggered terms of office of four years. The person filling position number five shall serve as a member of the Commission, subject to removal by the Governor as hereinafter specified in this section, so long as he continues as Director of the Water Resources Research Institute. The initial terms of office for members filling positions one, two, three and four, as specified in G.S. 113A-53(a), above, shall expire June 30, 1975; thereafter the terms of office for members filling those positions shall be four years. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time, remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance or, in the case of members filling positions one, five, six, seven, eight, and nine, as specified in G.S. 113A-53(a), above, because they no longer possess the required qualifications for membership. In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9 of the North Carolina Constitution. The Governor shall designate a member of the Commission to serve as chairman."

Section 113A-53 was repealed by Session Laws 1973, c. 1262, s. 41, ratified April 13, 1974, and effective July 1, 1974, and its provisions were incorporated in c. 1262, s. 40, codified above as § 143B-299. Session Laws 1973, c. 1417, ratified April 13, 1974, and effective on ratification, amended subdivision (a)(1) and subsection (b) of repealed § 113A-53 to read as set out in this note. In an opinion of the Attorney General to Mr. James E. Harrington, Secretary of Natural and Economic Resources, July 10, 1974, it was concluded that Session Laws 1973, c. 1417, s. 2, had the effect of amending Session Laws 1973, c. 1262, s. 40, so as to permanently remove the Secretary of Natural and Economic Resources from his position as chairman of the Sedimentation Control Commission.

Editor's Note. — The 1977 amendment, in subsection (a), substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory paragraph and in subdivision (1).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 9. Wastewater Treatment Plant Operators Certification Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1979, by Session Laws 1977, c. 712, s. 2. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-300. Wastewater Treatment Plant Operators Certification Commission — creation; powers and duties. — There is hereby created the Wastewater Treatment Plant Operators Certification Commission of the Department of Natural Resources and Community Development with the power and duty to adopt rules and regulations with respect to the certification of wastewater treatment plant operators as provided by Article 3 of Chapter 90A of the General Statutes of North Carolina.

The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for programs concerned with the certification of wastewater treatment plant operators which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid. (1973, c. 1262, s. 42; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-301. Wastewater Treatment Plant Operators Certification Commission — members; selection; removal; compensation; quorum; services. — The Wastewater Treatment Plant Operators Certification Commission of the Department of Natural Resources and Community Development shall consist of seven members appointed by the Secretary of Natural Resources and Community Development with the approval of the Environmental Management Commission with the following qualifications:

(1) Two members shall be currently employed as wastewater treatment plant operators, wastewater plant superintendents, water and sewer superintendents, or equivalent positions with a North Carolina municipality;

(2) One member shall be manager of a North Carolina municipality having a population of more than 10,000 as of the most recent federal census;

(3) One member shall be manager of a North Carolina municipality having a population of less than 10,000 as of the most recent federal census;

(4) One member shall be employed by a private industry and shall be responsible for supervising the treatment or pretreatment of industrial wastewater;

(5) One member who is a faculty member of a four-year college or university and whose major field is related to wastewater treatment; and

(6) One member who is employed by the Department of Natural Resources and Community Development and works in the field of water pollution control, who shall serve as chairman of the Certification Commission.

The initial members of the Commission shall be the members of the Wastewater Treatment Plant Operators Board of Certification who shall serve for a period equal to the remainder of their current terms on the Wastewater Treatment Plant Operators Board of Certification. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for staggered terms of three years and until their successors are appointed and qualify.

The chairman of the Wastewater Treatment Plant Operators Certification Commission shall serve at the pleasure of the Secretary of Natural Resources and Community Development.

Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of the Department. (1973, c. 1262, s. 43; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in two places in the introductory paragraph, in subdivision (6), and in the third paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 10. Earth Resources Council.

§ 143B-302. Earth Resources Council — creation; powers and duties. — There is hereby created the Earth Resources Council of the Department of Natural Resources and Community Development. The Earth Resources Council shall have the following functions and duties:

(1) To advise the Secretary of Natural Resources and Community Development with regard to improving the general welfare of the citizens of the State through the wise use and conservation of its soil, water, mineral and land resources; and

(2) The Council shall consider and advise the Secretary of Natural Resources and Community Development upon any matter that the Secretary may refer to it. (1973, c. 1262, s. 45; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-303. Earth Resources Council — members; chairman; selection; removal; compensation; quorum; services. — The Earth Resources Council of the Department of Natural Resources and Community Development shall consist of 10 members appointed by the Governor. The composition of the Council shall be as follows: one representative of commercial oil interests, one official of a regional council of government, one land-use planner, one land surveyor, one representative of the mining industry, one geologist, one representative of the construction industry, one engineer, and two representatives of nongovernmental conservation interests.

The Governor shall designate one member of the Council as chairman to serve in such capacity at the pleasure of the Governor.

Of the initial members of the Council, six shall be appointed by the Governor for terms of two years and four shall be appointed for terms of four years. At the end of the respective terms of office of the initial members of the Council, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 46; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and last paragraphs.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-304. Earth Resources Council — meetings. — The Earth Resources Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 47.)

Editor's Note. — This section originally referred to the Earth Resources Advisory Council. The name of the Council as created by Session Laws 1973, c. 1262, s. 45, is the Earth Resources Council. Therefore the word "Advisory" has been deleted.

Part 11. Community Development Council.

§ 143B-305. Community Development Council — creation; powers and duties. — There is hereby created the Community Development Council of the Department of Natural Resources and Community Development. The Community Development Council shall have the following functions and duties:

(1) To advise the Secretary of Natural Resources and Community Development with respect to promoting and assisting in the orderly development of North Carolina counties and communities.

(2) To advise the Secretary of Natural Resources and Community Development with respect to the type and effectiveness of planning and management services provided to local government.

(3), (4) Repealed by Session Laws 1977, c. 198, s. 13.

(5) The Council shall consider and advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it. (1973, c. 1262, s. 48; 1977, c. 198, ss. 13, 14; c. 771, ss. 4, 8.)

Editor's Note. — The first 1977 amendment substituted "Community Development Council" for "Community and Economic Development Council" in two places in the introductory paragraph and deleted subdivisions (3) and (4), which required the Council to advise the Secretary of Natural and Economic Resources with respect to the development of scientific and technological industry and with respect to the orderly development of the travel industry within the State.

The second 1977 amendment rewrote subdivision (1) and substituted "Community Development Council" for "Community and Economic Development Council" and "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 10, provides: "The terms of the current members of the Community Development Council, renamed by virtue of Chapter 198 of the 1977 Session Laws, the successor to the Community and Economic Development Council are terminated upon the effective date of this act." The act was ratified June 28, 1977, and made effective on ratification.

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 143B-306. Community Development Council — members; chairman; selection; removal; compensation; quorum; services. — The Community Development Council of the Department of Natural Resources and Community Development shall consist of 11 members appointed by the Governor. The composition of the Council shall be as follows: one member who shall be a local government official, one member who shall be the Executive Secretary of the League of Municipalities, one member who shall be the Executive Secretary of the County Commissioners Association, one member who shall represent industry, one member who shall represent labor, and six members at large.

The Governor shall designate one member of the Council to serve as chairman at the pleasure of the Governor.

The initial members of the Council other than those members serving in an ex officio capacity shall be appointed to serve for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 49; 1977, c. 198, s. 14; c. 771, ss. 4, 9.)

Editor's Note. — The first 1977 amendment substituted "Community Development Council" for "Community and Economic Development Council" near the beginning of the first paragraph.

The second 1977 amendment rewrote the second sentence of the first paragraph, and substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph and in the last paragraph, and "Community Development Council" for "Community and Economic Development Council" in the first sentence of the first paragraph.

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

§ 143B-307. Community Development Council — meetings. — The Community Development Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 50; 1977, c. 198, s. 14.)

Editor's Note. — The 1977 amendment substituted "Community Development Council" for "Community and Economic Development Council."

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Part 12. Forestry Council.

§ 143B-308. Forestry Council — creation; powers and duties. — There is hereby created the Forestry Council of the Department of Natural Resources and Community Development. The Forestry Council shall have the following functions and duties:

(1) To advise the Secretary of Natural Resources and Community Development with respect to all matters concerning the conservation and development of both state-owned and privately-owned forests in the State, including, the promotion of a more profitable use of forest lands;

(2) To undertake such studies and make such reports to the Secretary of Natural Resources and Community Development as the Secretary may direct; and

(3) To advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it. (1973, c. 1262, s. 52; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-309. Forestry Council — members; chairman; selection; removal; compensation; quorum; services. — The Forestry Advisory Council of the Department of Natural Resources and Community Development shall consist of 11 members appointed by the Governor. The composition of the Council shall be as follows: three members shall represent wood-using industries; two members shall represent farmers or other private, nonindustrial forest landowners; two members shall represent forestry interests not primarily concerned with the production of commercial timber, those interests to include but not be limited to watershed protection and environmental protection; one member who shall represent forestry organizations; one member who shall represent banking and financial interests; and two members who shall represent the general public.

The Governor shall designate one member of the Council to serve as chairman at the pleasure of the Governor.

The initial members of the Council shall be appointed as follows: five members for two-year terms and six members for four-year terms. At the end of the respective terms of office of the initial members of the Council, the appointments of all members shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 53; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph and in the last paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-310. Forestry Council — meetings. — The Forestry Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 54.)

Part 13. Parks and Recreation Council.

§ 143B-311. Parks and Recreation Council — creation; powers and duties. — There is hereby created the Parks and Recreation Council for the Department of Natural Resources and Community Development. The Parks and Recreation Council shall have the following functions and duties:

(1) To advise the Secretary of Natural Resources and Community Development with respect to the promotion, development and administration of the State's recreation and park system;
(2) To advise the Secretary of Natural Resources and Community Development with respect to the quality and quantity of the total recreation services provided to the citizens of the State and out-of-state visitors by governmental units, private agencies and commercial organizations;
(3) To advise the Secretary of Natural Resources and Community Development with respect to the development and maintenance of a feasible and effective action program to assure an adequate environment for satisfying recreation experiences;
(4) To educate and inform the citizens of the State with respect to both the needs and the opportunities of the recreation and park system; and
(5) The Council shall consider and advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it. (1973, c. 1262, s. 55; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-312. Parks and Recreation Council — members; chairman; selection; removal; compensation; quorum; services. — The Parks and Recreation Council shall be composed of 13 members appointed by the Governor. Four of the members must reside in the western part of the State, four must reside in the Piedmont, and four must reside in the eastern part of the State. The composition of the Council shall be as follows: one person who is an active professor in the area of parks and recreation; one person who is an active professor of biology; one local government official who is involved in recreation planning and is aware of the recreational needs of communities; one person who represents private recreational interests; one person who is the chairman of the Zoological Park Council; one person who is the chairman of one of the local federal reservoir advisory committees; and six persons who are citizens of the State and have both knowledge and interest in parks and recreation management. The president of the North Carolina Recreation and Parks Society, Incorporated shall serve as ex officio member of the Council.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

The members of the Council shall be appointed to terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 56; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-313. Parks and Recreation Council — meetings. — The Parks and Recreation Council shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chairman or upon written request of at least a majority of the members. (1973, c. 1262, s. 57.)

Part 14. North Carolina Water Safety Council.

§ 143B-314. North Carolina Water Safety Council — creation; powers and duties. — There is hereby created the North Carolina Water Safety Council of the Department of Natural Resources and Community Development. The North Carolina Water Safety Council shall have the following functions and duties:

(1) To advise the Wildlife Resources Commission with respect to the activities of the various public and private agencies, organizations, corporations, and individuals with responsibilities or interests relevant to the maintenance of an effective program of water safety in North Carolina; and

(2) The Council shall consider and advise the Wildlife Resources Commission upon any matter that the Commission may refer to it. (1973, c. 1262, s. 58; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-315. North Carolina Water Safety Council — members; officers; selection; removal; compensation; quorum; services. — The North Carolina Water Safety Council shall consist of 15 members appointed by the Governor. They must represent the various viewpoints and interests respecting water safety that exist within the State.

The Governor shall designate one member of the Council to serve as chairman at his pleasure. The Council shall annually elect one member as vice-chairman to serve in the absence of the chairman.

In order to achieve staggered terms, the Governor shall initially appoint eight members for terms of two years and seven members for terms of four years. After the initial appointments, subsequent appointments of all members of the Council shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The members of the Council shall receive per diem necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of their business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 59; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-316. North Carolina Water Safety Council — meetings. — The Council shall meet at least semiannually and may hold special meetings at any time and place at the call of the chairman or upon the written request of at least 10 members. (1973, c. 1262, s. 60.)

Part 15. Air Quality Council.

§ 143B-317. Air Quality Council — creation; powers and duties. — There is hereby created the Air Quality Council of the Department of Natural Resources and Community Development. The Air Quality Council shall have the following functions and duties:

(1) To advise the Environmental Management Commission in the development of rules, regulations and quality standards for air; and

(2) To consider and to advise the Commission upon any matter the Commission may refer to it. (1973, c. 1262, s. 61; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-318. Air Quality Council — members; chairman; selection; removal; compensation; quorum; services. — The Air Quality Council of the Department of Natural Resources and Community Development shall consist of nine members appointed by the Governor. The composition of the Council shall be as follows: one registered professional engineer knowledgeable in matters of air pollution; one representative from municipal government; one representative from county government; one representative of public health; two representatives from industry providing they are from different industries; one representative of agriculture; one licensed physician knowledgeable in the health aspects of air pollution; and one practicing biologist knowledgeable in the principles of air quality management.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

In order to achieve staggered terms, the Governor shall initially appoint three members for terms of two years, three members for terms of four years, and three members for terms of six years. At the end of the respective terms of office of the initial members, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of their business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 62; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph and in the last paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-319. Air Quality Council — meetings. — The Council shall meet at least semiannually and may hold special meetings at any time and place at the call of the chairman or upon the written request of at least five members. (1973, c. 1262, s. 63.)

Part 16. Water Quality Council.

§ 143B-320. Water Quality Council — creation; powers and duties. — There is hereby created the Water Quality Council of the Department of Natural Resources and Community Development. The Water Quality Council shall have the following functions and duties:

(1) To advise the Environmental Management Commission in the development of rules, regulations and quality standards for water; and

(2) To consider and to advise the Commission upon any matter the Commission may refer to it. (1973, c. 1262, s. 64; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the first sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-321. Water Quality Council — members; chairman; selection; removal; compensation; quorum; services. — The Water Quality Council of the Department of Natural Resources and Community Development shall consist of nine members appointed by the Governor. The composition of Council shall be as follows: one registered professional engineer knowledgeable in matters of water pollution; one representative from municipal government; one representative from county government; one representative of public health; two representatives from industry providing they are from different industries; one representative of agriculture; one licensed physician knowledgeable in the health aspects of water pollution, and one practicing biologist knowledgeable in the principles of water quality management.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

In order to achieve staggered terms, the Governor shall initially appoint three members for terms of two years, three members for terms of four years, and three members for terms of six years. At the end of the respective terms of office of the initial members of the Council, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of their business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 65; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph and in the last paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 17. North Carolina National Park, Parkway and Forests Development Council.

§§ 143B-322 to 143B-324: Recodified as §§ 143B-446 to 143B-447.1 by Session Laws 1977, c. 198, s. 26.

Part 18. Commercial and Sports Fisheries Advisory Committee.

§ 143B-325. Commercial and Sports Fisheries Advisory Committee — creation, powers and duties. — There is hereby created the Commercial and Sports Fisheries Advisory Committee of the Department of Natural Resources and Community Development. The Commercial and Sports Fisheries Advisory Committee shall have the following functions and duties:

(1) To study all matters and activities in connection with the conservation of marine and estuarine resources and make recommendations to the Secretary of Natural Resources and Community Development;

(2) To act as a liaison group between sports and commercial fishermen, and others interested in the beneficial utilization of the marine and estuarine resources, and the Secretary of Natural Resources and Community Development;

(3) The Advisory Committee shall consider and advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it; and

(4) The Advisory Committee may originate its own studies on various matters within the scope of its interests and report on such matters to the public or to the agency or official appropriately concerned. (1973, c. 1262, s. 69; 1977, c. 512, s. 4; c. 771, s. 4.)

Editor's Note. — Session Laws 1977, c. 512, s. 4, purported to repeal former Part 18, Commercial and Sports Fisheries Committee, of this Article containing §§ 143B-325 through 143B-327, and enact a new Part 18A, Commercial and Sports Fisheries Advisory Committee, containing §§ 143B-325.1 through 143B-325.3. Except for the insertion of the word "Advisory" in the title of the Committee, and the deletion of one phrase in § 143B-326, the new Part 18A was virtually identical to the repealed Part 18, and it has therefore been treated as amending Part 18, §§ 143B-325 through 143B-327.

The first 1977 amendment inserted "Advisory" preceding "Committee" throughout the section.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-326. Commercial and Sports Fisheries Advisory Committee — members; chairman; selection; removal; compensation; quorum; services. — The Commercial and Sports Fisheries Advisory Committee shall consist of nine members appointed by the Governor. The composition of the Advisory Committee shall be as follows: three members who are sports fishermen, three members who are commercial fishermen, and three members who are professional scientists with backgrounds relevant to the conservation of marine and estuarine resources.

The Governor shall designate one member of the Advisory Committee to serve as chairman at his pleasure.

The initial members of the Advisory Committee shall be appointed as follows: four members for two years and five members for four years. At the end of the respective terms of office of the initial members of the Advisory Committee, appointments shall be made for four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Advisory Committee created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Advisory Committee from office.

Members of the Advisory Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Advisory Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Advisory Committee shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 70; 1977, c. 512, s. 4; c. 771, s. 4.)

Editor's Note. — The first 1977 amendment inserted "Advisory" preceding "Committee" throughout the section. The amendment also deleted "in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973" from the fourth paragraph.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-327. Commercial and Sports Fisheries Advisory Committee — meetings. — The Commercial and Sports Fisheries Advisory Committee shall meet at least semiannually and may hold special meetings at any time or place within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 71; 1977, c. 512, s. 4.)

Editor's Note. — The 1977 amendment inserted "Advisory" preceding "Committee."

Part 19. John H. Kerr Reservoir Committee.

§ 143B-328. John H. Kerr Reservoir Committee — creation; powers and duties. — There is hereby created the John H. Kerr Reservoir Committee for the Department of Natural Resources and Community Development. The John H. Kerr Reservoir Committee shall have the following functions and duties:

(1) To study the development of the John H. Kerr area and recommend to the Secretary of Natural Resources and Community Development policies and programs that will promote the development of this area to the fullest extent possible for the benefit and enjoyment of the citizens of North Carolina and of the nation;

(2) To recommend to the Secretary of Natural Resources and Community Development reasonable rules and regulations for the use by the public of all real and personal property under jurisdiction of the John H. Kerr Reservoir;

(3) To consider and advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it; and

(4) To stimulate, inform and educate the citizens of the State about the needs as well as the opportunities of the John H. Kerr Reservoir. (1973, c. 1262, s. 73; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" throughout the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-329. John H. Kerr Reservoir Committee — members; chairman; selection; removal; compensation; quorum; services. — The John H. Kerr Reservoir Committee shall be composed of nine members appointed by the Governor. Six of these shall be residents of three counties that are contiguous to the John H. Kerr Reservoir: two from Vance County; two from Granville County; and two from Warren County. The remaining three members may be appointed at large.

The Governor shall designate one member of the Committee to serve as chairman at his pleasure.

The initial members of the Committee shall be the appointed members of the John H. Kerr Reservoir Development Commission who shall serve for a period equal to the remainder of their current terms on the John H. Kerr Reservoir Development Commission, five of whose terms expire July 26, 1973, three of whose terms expire July 26, 1975, and one of whose term expires July 26, 1977. At the end of the respective terms of office of the initial members of the Committee, the appointments of their successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 74; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" at the end of the section.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-330. John H. Kerr Reservoir Committee — meetings. — The John H. Kerr Reservoir Committee shall meet at least semiannually and may hold special meetings at any time, any place, within the State at the call of the chairman or upon the written request of at least a majority of the members. (1973, c. 1262, s. 75.)

Part 20. Science and Technology Committee.

§§ 143B-331, 143B-332: Recodified as §§ 143B-440, 143B-441 by Session Laws 1977, c. 198, s. 26.

Part 21. North Carolina Trails Committee.

§ 143B-333. North Carolina Trails Committee — creation; powers and duties. — There is hereby created the North Carolina Trails Committee of the Department of Natural Resources and Community Development. The Committee shall have the following functions and duties:

(1) To meet not less than two times annually to advise the Department on all matters directly or indirectly pertaining to trails, their use, extent, location, and the other objectives and purposes of G.S. 113A-88.

(2) To coordinate trail development among local governments, and to assist local governments in the formation of their trail plans and advise the Department of its findings.

(3) To advise the Secretary of trail needs and potentials pursuant to G.S. 113A-88. (1973, c. 1262, s. 80; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory language.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-334. North Carolina Trails Committee — members; selection; removal; compensation. — The North Carolina Trails Committee shall consist of seven members appointed by the Secretary of Natural Resources and Community Development. Two members shall be from the mountain section, two from the Piedmont section, two from the coastal plain, and one at large. They shall as much as possible represent various trail users.

The initial members of the North Carolina Trails Committee shall be the members of the current North Carolina Trails Committee who shall serve for a period equal to the remainder of their current term on the North Carolina Trails Committee. At the end of the respective terms of office of the initial members of the Committee, the appointment of their successors shall be for staggered terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Secretary of Natural Resources and Community Development shall designate a member of the Committee to serve as chairman at the pleasure of the Governor.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973. (1973, c. 1262, s. 81; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first sentence of the first paragraph and in the fourth paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 22. North Carolina Zoological Park Council.

§ 143B-335. North Carolina Zoological Park Council — creation; powers and duties. — There is hereby created the North Carolina Zoological Park Council of the Department of Natural Resources and Community Development.

The North Carolina Zoological Park Council shall have the following functions and duties:

(1) To advise the Secretary on the basic concepts of and for the Zoological Park, approve conceptual plans for the Zoological Park and its buildings;

(2) To advise on the construction, furnishings, equipment and operations of the North Carolina Zoological Park;

(3) To recommend programs to promote public appreciation of the North Carolina Zoological Park;

(4) To disseminate information on animals and the park as deemed necessary;

(5) To develop effective public support of the North Carolina Zoological Park through whatever means are desirable and necessary;

(6) To solicit financial and material support from various private sources within and without the State of North Carolina; and

(7) To advise the Secretary of Natural Resources and Community Development upon any matter the Secretary may refer to it. (1973, c. 1262, s. 83; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the introductory language and in subdivision (7).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-336. North Carolina Zoological Park Council — members; selection; removal; chairman; compensation; quorum; services. — The North Carolina Zoological Park Council of the Department of Natural Resources and Community Development shall consist of 15 members appointed by the Governor.

The initial members of the Council shall be the members of the Board of Directors of the North Carolina Zoo Authority who shall serve for a period equal to the remainder of their current terms on the Board of Directors of the North Carolina Zoological Authority, all of whose terms expire July 15, 1975. At the end of the respective terms of office of the initial members of the Council, the Governor, to achieve staggered terms, shall appoint five members for terms of two years, five members for terms of four years and five members for terms of six years. Thereafter, the appointment of their successors shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development. (1973, c. 1262, s. 84; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the first and last paragraphs.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 23. Governor's Law and Order Commission.

§§ 143B-337 to 143B-339: Recodified as §§ 143B-478 to 143B-480.

Editor's Note. — This Part was rewritten by Session Laws 1977, c. 11, and has been recodified as §§ 143B-478 to 143B-480.

Part 24. North Carolina Employment and Training Council.

§ 143B-340. North Carolina Employment and Training Council — creation; duties and responsibilities. — There is hereby created a North Carolina Employment and Training Council, within the Department of Natural Resources and Community Development hereinafter referred to as "the Council."

The Council shall have the following duties and responsibilities:

(1) To advise the Governor on goals, objectives and policies regarding employment, training, and related programs, including community employment;

(2) To review the plans and programs of agencies operating federally funded programs related to employment and training and of other agencies providing employment and training-related services in the State;

(3) To make recommendations to the affected agencies, and to the Governor regarding the effective planning, delivery and coordination of employment, training and related services within the State; and

(4) To conduct studies, prepare reports and provide such advisory services as may be authorized or directed by the Governor or the Secretary of Natural Resources and Community Development. (1977, c. 771, s. 6.)

§ 143B-341. North Carolina Employment and Training Council — structure; staff support; related councils. — The North Carolina Employment and Training Council shall consist of 21 members, to be selected by the Governor in a manner consistent with related federal law and regulations and who shall serve at the pleasure of the Governor. The Governor, who shall not be a voting member, shall serve as the chairman. The Governor may appoint a vice-chairman who shall preside over meetings in his absence.

The Council shall meet at least three times annually at the call of the chairman or the Secretary of Natural Resources and Community Development. A majority of the Council shall constitute a quorum for the transaction of business. Members shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5, G.S. 138-6, or G.S. 120-3.1, as the case may be.

The Council may create such committees as may be necessary to the proper conduct of its business. The Governor may establish such additional advisory bodies, in accordance with existing law, related to employment and training as may be necessary and appropriate to the conduct of federally supported employment and training-related programs.

Clerical and other services required by the Council shall be supplied by the Secretary of Natural Resources and Community Development.

The Secretary of Natural Resources and Community Development or his designee shall serve as Secretary of the Council. (1977, c. 771, s. 6.)

§§ 143B-342 to 143B-344: Reserved for future codification purposes.

ARTICLE 8.

Department of Transportation.

Part 1. General Provisions.

§ 143B-345. Department of Transportation — creation. — There is hereby created and established a department to be known as the "Department of Transportation" with the organization, powers, and duties defined in Article 1 of Chapter 143B, except as modified in this Article. (1975, c. 716, s. 1.)

§ 143B-346. Department of Transportation — purpose and functions. — The general purpose of the Department of Transportation is to provide for the necessary planning, construction, maintenance, and operation of an integrated statewide transportation system for the economical and safe transportation of people and goods as provided for by law. The Department shall also provide and maintain an accurate register of transportation vehicles as provided by statutes, and the Department shall enforce the laws of this State relating to transportation safety assigned to the Department. The Department of Transportation shall be responsible for all of the transportation functions of the executive branch of the State as provided by law except those functions delegated to the Utilities Commission, the State Ports Authority, and the Commissioners of Navigation and Pilotage as provided for by Chapter 76. The major transportation functions include aeronautics, highways, mass transportation, motor vehicles, and transportation safety as provided for by State law. The Department of Transportation shall succeed to all functions vested in the Board of Transportation and the Department of Motor Vehicles on July 1, 1977. (1975, c. 716, s. 1; 1977, c. 464, s. 2.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 143B-347: Repealed by Session Laws 1977, c. 464, s. 3.

Cross Reference. — For present provisions as to the functions of the Department of Transportation, see § 143B-346.

§ 143B-348. Department of Transportation — head; rules, regulations, etc., of Board of Transportation. — The Secretary of Transportation shall be the head of the Department of Transportation. He shall carry out the day-to-day operations of the Department and shall be responsible for carrying out the policies, programs, priorities, and projects approved by the Board of Transportation. He shall be responsible for all other transportation matters assigned to the Department of Transportation, except those reserved to the Board of Transportation by statute. Except as otherwise provided for by statute, the Secretary shall have all the powers and duties as provided for in Article 1 of Chapter 143B including the responsibility for all management functions for the Department of Transportation. The Secretary shall be vested with authority to adopt design criteria, construction specifications, and standards as required for the Department of Transportation to construct and maintain highways, bridges, and ferries.

All rules, regulations, ordinances, specifications, standards, and criteria adopted by the Board of Transportation and in effect on July 1, 1977, shall continue in effect until changed by the Board of Transportation or the Secretary of Transportation. The Secretary shall have complete authority to modify any of these matters existing on July 1, 1977, except as specifically restricted by the

Board. Whenever any such criteria, rule, regulation, ordinance, specification, or standards are continued in effect under this section and the words "Board of Transportation" are used, the words shall mean the "Department of Transportation" unless the context makes such meaning inapplicable. All actions pending in court by or against the Board of Transportation may continue to be prosecuted in that name without the necessity of formally amending the name to the Department of Transportation. (1975, c. 716, s. 1; 1977, c. 464, s. 4.)

Editor's Note. — The 1977 amendment added "of Transportation" at the end of the first sentence and added the remainder of the section.

§ 143B-349: Repealed by Session Laws 1977, c. 464, s. 5.

Part 2. Board of Transportation — Secondary Roads Council.

§ 143B-350. Board of Transportation — organization; powers and duties, etc. — (a) There is hereby created a Board of Transportation. The Board shall carry out its duties consistent with the needs of the State as a whole and it shall not sacrifice the general statewide interest to the purely local desires of any particular area. The Board may, from time to time, provide that one or more of its members or representatives shall hear any person or persons concerning transportation.

(b) The Secretary of Transportation shall be an ex officio member of the Board of Transportation and shall be the chairman of the Board of Transportation.

(c) The Board of Transportation shall have 21 members appointed by the Governor. One member shall be appointed from each of the 14 highway engineering divisions and seven members shall be appointed from the State at large. One at-large member shall be a registered voter of a political party other than the political party of the Governor. No more than two members provided for in this subsection shall reside in the same engineering division while serving in office. The initial members shall serve terms beginning July 1, 1977, and ending January 14, 1981, or until their successors are appointed and qualified. The succeeding terms of office shall be for a period of four years beginning January 15, 1981, and each four years thereafter. The Governor shall have the authority to remove for cause sufficient to himself, any member appointed by the Governor.

(d) The Board of Transportation shall have two members appointed from the membership of the General Assembly, in addition to those members appointed by the Governor. One member shall be appointed from the membership of the Senate by the Lieutenant Governor and one member shall be appointed from the membership of the House of Representatives by the Speaker of the House of Representatives. The legislative members shall be appointed for initial terms beginning July 1, 1977, and shall serve for a term ending January 14, 1979, or until a successor is duly appointed and qualified. The succeeding term of each shall be for two years beginning January 15, 1979, and each two years thereafter. Vacancies in each office shall be filled by the incumbent of the office making the appointment to the Board.

(e) The Board of Transportation shall meet once in each 60 days at such regular meeting times as the Board may by rule provide and at any place in the State as the Board may provide. The Board may hold special meetings at any time at the call of the chairman or any three members. The Board shall have the power to adopt and enforce rules and regulations for the government of its business and proceedings. The Board shall keep minutes of its meetings, which shall at all times be open to public inspection. The majority of the Board shall constitute a quorum for the transaction of business. The members of the Board who are not members of the General Assembly shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 138-5 and 138-6, as appropriate. The members of the Board who are members of the General Assembly shall not receive per diem but shall receive travel and subsistence expenses at the rates set out in G.S. 120-3.1.

(f) The Board of Transportation shall have duties and powers:

(1) To formulate policies and priorities for all modes of transportation under the Department of Transportation;

(2) To advise the Secretary on matters to achieve the maximum public benefit in the performance of the functions assigned to the Department;

(3) To ascertain the transportation needs and the alternative means to provide for these needs through an integrated system of transportation taking into consideration the social, economic and environmental impacts of the various alternatives;

(4) To approve a schedule of all major transportation improvement projects and their anticipated cost for a period of seven years into the future which shall be published in a single document along with a report of the progress accomplished in the past year;

(5) To consider and advise the Secretary of Transportation upon any other transportation matter that the Secretary may refer to it;

(6) To assist the Secretary of Transportation in the performance of his duties in the development of programs and approve priorities for programs within the Department;

(7) To allocate all highway construction and maintenance funds appropriated by the General Assembly as well as federal-aid funds which may be available;

(8) To approve all highway construction programs;

(9) To approve all highway construction projects and construction plans for the construction of projects;

(10) To review all statewide maintenance functions;

(11) To award all highway construction contracts;

(12) To authorize the acquisition of rights-of-way for highway improvement projects, including the authorization for acquisition of property by eminent domain;

(13) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

(g) The Board of Transportation may, in its discretion, delegate to the Secretary of Transportation the authority:

(1) To approve all highway construction projects and construction plans for the construction of projects;

(2) To award all highway construction contracts;

(3) To promulgate rules, regulations, and ordinances concerning all transportation functions assigned to the Department.

The Secretary may, in turn, subdelegate these duties and powers. (1975, c. 716, s. 1; 1977, c. 464, s. 6.)

Editor's Note. — The 1977 amendment rewrote this section.

§§ 143B-351, 143B-352: Repealed by Session Laws 1977, c. 464, s. 7.

Part 3. North Carolina State Ports Authority Transfer.

§ 143B-353: Repealed by Session Laws 1977, c. 65, s. 3.

Part 4. Navigation and Pilotage Commissions.

§ 143B-354: Recodified as § 143B-451 by Session Laws 1977, c. 198, s. 26.

Part 5. Division of Aeronautics — Aeronautics Council.

§ 143B-355. Division of Aeronautics. — There is hereby created the Division of Aeronautics of the Department of Transportation. The Division of Aeronautics shall carry out the duties assigned to the Department of Transportation by Article 1B of Chapter 113 of the General Statutes. (1975, c. 716, s. 1.)

§ 143B-356. Aeronautics Council — creation; powers and duties. — There is hereby created the Aeronautics Council of the Department of Transportation. The Aeronautics Council shall advise the Secretary of the Department in the issuance of loans and grants to the cities, counties, and public airport authorities of North Carolina for the purposes of planning, acquiring, constructing, or improving municipal, county, or public authority airport facilities and upon any matter relating to airports which the Secretary may refer to it. The Secretary shall report the activities of the Council to the Governor. (1975, c. 716, s. 1.)

§ 143B-357. Aeronautics Council — members; selection; quorum; compensation. — The Aeronautics Council of the Department of Transportation shall consist of 11 members appointed by the Governor, who, in making such appointments, shall designate one person from each of the congressional districts of the State. At least four of the appointed members shall possess a broad knowledge of aviation and airport development.

Five of the initial members of the Council shall be the five members of the Governor's Aviation Committee whose terms expire on June 30, 1977, who shall serve on the Council until June 30, 1977. Thereafter, their successors shall be appointed for a term of office of four years. Six members of the Council shall be appointed for a term of four years beginning July 1, 1975. Thereafter, after the expiration of their respective terms of office, the successors shall be appointed for terms of four years. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16.

The Governor shall designate a member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Transportation. (1975, c. 716, s. 1.)

Part 6. North Carolina Railroad and Atlantic Railroad.

§ 143B-358. North Carolina Railroad and Atlantic and North Carolina Railroad. — The Department of Transportation shall make a study of the status of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company, and the State's interest in them including ownership of stock of the railroads by the State. The Department of Transportation shall report to the transportation committees of the House and Senate of the next General Assembly. The report shall include the State's investment in the railroads, the State's interest in the railroads, a history of the financial transactions between the State and the railroads involving loans or credit of the State, and how the State's interest as a shareholder is exercised. The report shall include recommendations for continued State ownership of the stock in the railroads, continuance of the present lease arrangements of the railroads and alternatives at the expiration of the leases, and it shall include recommendations for a method of exercising the State's interest as a shareholder in the railroads and monitoring the activities of the said railroads. (1975, c. 716, s. 1.)

Part 7. North Carolina Traffic Safety Authority.

§ 143B-359. North Carolina Traffic Safety Authority. — The North Carolina Traffic Safety Authority as provided for by Article 44 of Chapter 143 is hereby transferred to the Department of Transportation. The Authority shall exercise the duties as provided in the statute without supervision or control of the Secretary of Transportation except as provided in the Article. The Authority shall report to the Governor through the Secretary of Transportation. (1975, c. 716, s. 1.)

Part 8. Highway Safety Program.

§ 143B-360. Powers and duties of Department and Secretary. — The Department of Transportation is hereby empowered to contract in behalf of the State with the government of the United States to the extent allowed by the laws of North Carolina for the purpose of securing the benefits available to this State under the Federal Highway Safety Act of 1966. To that end, the Secretary of Transportation shall coordinate, with the Governor's approval, the activities of any and all departments and agencies of the State and its subdivisions relating thereto. (1975, c. 716, s. 1.)

§§ 143B-361 to 143B-365: Reserved for future codification purposes.

ARTICLE 9.

Department of Administration.

Part 1. General Provisions.

§ 143B-366. Department of Administration — creation. — There is hereby recreated and reestablished a department to be known as the "Department of Administration," with the organization, powers, and duties defined in the Executive Organization Act of 1973. (1975, c. 879, s. 2.)

Cross Reference. — For other provisions as to the Department of Administration, see § 143-334 et seq.

§ 143B-367. Duties of the Department. — It shall be the duty of the Department of Administration to serve as a staff agency to the Governor and to provide for such ancillary services as the other departments of State government might need to insure efficient and effective operations. (1975, c. 879, s. 3.)

Cross References. — As to powers and duties of the Department of Administration, see § 143-341. As to establishment of land records management program in the Department of Administration, see § 143-345.6.

§ 143B-368. Functions of the Department. — (a) The functions of the Department of Administration shall comprise, except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina, all functions of the executive branch of the State in relation to interdepartmental administration previously delineated and further including those prescribed powers, duties, functions, and responsibilities enumerated in Article 10 of Chapter 143A of the General Statutes of North Carolina.

(b) All such functions, powers, duties and obligations heretofore vested in any agency enumerated in Article 10 of Chapter 143A of the General Statutes of North Carolina, are hereby transferred to and vested in the Department of Administration except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not limitation, the functions of

(1) The Director of the Department of Administration,
(2) The Systems Management Division,
(3) The North Carolina Capital Planning Commission,
(4) The State Youth Council and the Youth Advisory Board,
(5) The North Carolina Human Relations Commission,
(6) The North Carolina Commission on Interstate Cooperation,
(7) The State Construction Finance Authority,
(8) The Marine Science Council,
(9) The Southern Interstate Nuclear Compact, and
(10) The Council on the Status of Women.

Also the functions shall comprise those specified for the Day-Care Licensing Board in Article 7 of Chapter 110 of the General Statutes, and the North Carolina Manpower Council in Article 29D of Chapter 143 of the General Statutes. (1975, c. 879, s. 4.)

Cross Reference. — As to powers and duties of the Department of Administration, see also § 143-341.

Editor's Note. — Article 29D of Chapter 143 was repealed by Session Laws 1975, c. 879, s. 42. The same 1975 act enacted this Article. For present provisions as to the North Carolina Manpower Council, see §§ 143B-395, 143B-396.

§ 143B-369. Head of the Department. — The Secretary of Administration shall be the head of the Department. (1975, c. 879, s. 5.)

Cross Reference. — As to the powers and duties of the Secretary of Administration, see § 143-340.

§ 143B-370. Organization of the Department. — The Department of Administration shall be organized initially to include the State Goals and Policy Board, the State Personnel Board, the North Carolina Capital Planning Commission, the Child Day-Care Licensing Commission, the North Carolina Drug Commission, the North Carolina Council on Interstate Cooperation, the State Youth Advisory Council, the North Carolina Marine Science Council, the North Carolina Human Relations Council, the Council on the Status of Women, the North Carolina Manpower Council, the Standardization Committee, the Southern Interstate Nuclear Compact, the Division of State Budget and Management, the Division of State Planning, the Division of State Property and Construction, the Division of State Purchase and Contract, the Division of State

Personnel, the Division of State Management Systems, the Division of State General Services, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973. (1975, c. 879, s. 6.)

Part 2. State Goals and Policy Board.

§ 143B-371. State Goals and Policy Board — creation; powers and duties. — There is hereby created the State Goals and Policy Board of the Department of Administration. The State Goals and Policy Board shall have the following functions and duties:

(1) To express the needs and aspirations of North Carolina's citizens and identify the kind of future they want for themselves in the form of goals proposed for State action along with a suggested timetable within which these goals might reasonably be achieved;

(2) To study the resources and means of action available to State government and recommend policies to guide the State in using these resources and means to achieve State goals and suggest short-run goals, consistent with the long-run goals, that should receive priority consideration within a three- to five-year frame;

(3) To evaluate the present structure and activities of State government and recommend improvements in management and communication so that the State may pursue its chosen goals in an efficient and well-coordinated manner;

(4) To identify areas of public interest where needs are urgent or present policies inadequate and recommend appropriate study and analysis to provide a basis for evaluating alternative courses of action;

(4a) Establish priorities in order to pursue a comprehensive plan to avert the exorbitant social and economic costs of diseases, deformities, and other human miseries. These costs can be drastically reduced by the adoption of a policy of prevention designed to ease the emotional and financial burdens resulting from fragmented and piecemeal efforts to deal with problems after they arise, as well as to ensure a higher quality of life for the citizens of this State.

(5) To inform the general public of the main problems facing the State and involve the citizenry in the study and debate of State goals and policy; and

(6) To submit a report to the Governor by November 30 of each year to guide him in preparing his "state of the State" message.

Members of the Board, who are not officers, or employees of the State, shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Board shall constitute a quorum for the transaction of business.

All clerical and other services required by the Board shall be supplied by the Secretary of Administration. (1975, c. 879, s. 7; 1977, c. 923, s. 1.)

Editor's Note. — The 1977 amendment added subdivision (4a).

§ 143B-372. State Goals and Policy Board — members; selection; quorum; compensation. — The State Goals and Policy Board of the Department of Administration shall consist of 16 members, 15 of whom shall be appointed by the Governor and the Governor who shall himself serve as an ex officio member. The composition of the Board shall be citizens whose background, training, and experience qualify them to survey the whole range of State needs, to propose

State goals, and to recommend ways for State government to achieve these goals.

The initial members of the State Goals and Policy Board shall be the members of the Council on State Goals and Policy who shall serve for a period equal to the remainder of their current terms on the Council on State Goals and Policy, five of whose appointments expire March 13, 1977, and five of whose appointments expire March 13, 1978, and five of whose appointments expire March 13, 1979. At the end of the respective terms of office of the initial members of the Board, the appointment of their successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

The Governor shall serve as chairman of the Board and designate a member to serve in such capacity in his absence. The Board shall meet quarterly and at other times at the call of the chairman. (1975, c. 879, s. 8.)

Part 3. North Carolina Capital Planning Commission.

§ 143B-373. North Carolina Capital Planning Commission — creation; powers and duties. — There is hereby recreated the North Carolina Capital Planning Commission of the Department of Administration.

(1) The Commission shall have the following powers and duties:

- a. To obtain and maintain up-to-date building requirements for State governmental agencies in the City of Raleigh and its environs;
- b. To formulate a long-range capital improvement program as required for State central governmental agencies in the City of Raleigh and its environs and maintain this program up-to-date;
- c. To recommend the acquisition of land as required;
- d. To select the locations for State government buildings, monuments, memorials and improvements in the City of Raleigh and its environs; and
- e. To name any new State government building or any building hereafter acquired by the State of North Carolina in the City of Raleigh and its environs, with the exception of buildings comprising a part of the North Carolina State University, the Dorothea Dix Hospital, or the Governor Morehead School;

(2) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for capital improvement purposes which may be made available to the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(3) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the existing North Carolina Capital Planning Commission shall remain in full force and effect unless and until repealed or superseded by action of the recreated Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Administration. (1975, c. 879, s. 10.)

§ 143B-374. North Carolina Capital Planning Commission — members; selection; quorum; compensation. — The North Carolina Capital Planning Commission of the Department of Administration shall consist of the following ex officio members: the Governor of North Carolina who shall serve as chairman; all members of the Council of State including the Lieutenant Governor, who shall serve as vice-chairman; the Speaker, and four members of the North Carolina House of Representatives, and four members of the North Carolina Senate; and a representative of the City of Raleigh to be designated by the City Council of Raleigh to serve a two-year term to expire at the same date city council members' terms expire. The Lieutenant Governor shall appoint the four members of the Senate on or before July 1, 1975, for two-year terms to expire at the same date General Assembly members' terms expire. The Speaker of the House of Representatives shall appoint the four members of the House on or before July 1, 1975, for two-year terms to expire at the same date General Assembly members' terms expire.

Public officers who are made members of the Commission shall be deemed to serve ex officio.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Administration.

All minutes, records, plans, and all other documents of public record of the State Capital Planning Commission, the Heritage Square Commission, and the former North Carolina Capital Planning Commission shall be turned over to the Department of Administration.

The Commission shall meet quarterly, and at other times at the call of the chairman. (1975, c. 879, s. 11.)

Part 4. Child Day-Care Licensing Commission.

Repeal of Part. — This Part is repealed, effective July 1, 1981, by Session Laws 1977, c. 712, s. 3. The 1977 act also repeals, with postponed effective dates, numerous other Chapters and Articles creating licensing and regulatory agencies, and sets up a Government Evaluation Commission whose function is to conduct a performance evaluation of the programs and functions of each such agency and report to General Assembly whether the program or function in question should be terminated, reconstituted, reestablished or continued. The Commission will go out of existence June 30, 1983. The 1977 act is codified as § 143-34.10 et seq.

§ 143B-375. Child Day-Care Licensing Commission — creation; powers and duties. — There is hereby created the Child Day-Care Licensing Commission of the Department of Administration with the power and duty to adopt rules and regulations to be followed in the licensing and operation of child day-care facilities and day-care plans as provided by Article 7 of Chapter 110 of the General Statutes of North Carolina.

(1) The Child Day-Care Licensing Commission shall have the power and duty to adopt rules and regulations:
  a. For the issuance of licenses to any day-care facility; and
  b. To register day-care plans and to adopt rules and regulations as provided by Article 7 of Chapter 110 of the General Statutes of the State of North Carolina, and to establish standards for "AA" license, only, as authorized by G.S. 110-88(7).

(2) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Child Day-Care Licensing Board shall remain in full force and effect unless and until repealed or superseded by action of the Child Day-Care

Licensing Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Administration. (1975, c. 879, s. 13.)

§ 143B-376. Child Day-Care Licensing Commission — members; selection; quorum; compensation. — The Child Day-Care Licensing Commission of the Department of Administration shall consist of 15 members, five of whom shall be State officials and 10 of whom shall be citizen members appointed by the Governor as hereinafter provided. The five State officials who shall serve on the Commission shall be the Governor, the Attorney General, the Commissioner of Insurance, the State Superintendent of Public Instruction and the Secretary of Human Resources. Any State official may designate a representative of his department to sit in his place on the Commission. The 10 citizen members shall be appointed by the Governor with provision that none shall be employees of the State and at least five of said appointees shall be operators of day-care facilities subject to licensing who are actively engaged in the operation for profit. Of the five operators who are operating for profit, one shall be from a facility licensed for no more than 29 children, three shall be from facilities licensed for no more than 70 children and one operator shall be from a facility licensed for more than 70 children. Three appointees shall be citizens not employed by day-care facilities who have no direct or indirect pecuniary interest in such, but two of whom shall be parents of preschool children at the time of their appointment. Two appointees shall be operators of nonprofit day-care facilities. The initial members of the Commission shall be the appointed members of the Child Day-Care Licensing Board who shall serve for a period equal to the remainder of their current terms on the Child Day-Care Licensing Board, three of whose appointments expire December 31, 1975, four of whose appointments expire December 31, 1977, and three of whose appointments expire December 31, 1980. The terms of each State official, or his designee shall end on the day his term of office ends, whether by death, resignation, or expiration of such term. At the end of the respective terms of office of the initial members of the Commission, their successors shall be appointed for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, and nonfeasance according to the provisions of G.S. 143B-13.

The Governor shall designate a member of the Commission as chairman to serve in such capacity at the pleasure of the Governor.

The Commission shall meet quarterly, and at other times at the call of the chairman or upon written request of at least six members.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

All clerical and other services required by the Commission shall be supplied by the Secretary of Administration. (1975, c. 879, s. 14.)

Part 5. North Carolina Drug Commission.

§§ 143B-377, 143B-378: Repealed by Session Laws 1977, c. 667, s. 1.

Part 6. North Carolina Council on Interstate Cooperation.

§ 143B-379. North Carolina Council on Interstate Cooperation — creation; powers and duties. — There is hereby created the North Carolina Council on Interstate Cooperation of the Department of Administration.

The North Carolina Council on Interstate Cooperation shall have the following functions and duties:

(1) To carry forward the participation of this State as a member of the Council of State Governments;

(2) To encourage and assist the legislative, executive, administrative, and judicial officials and employees of this State to develop and maintain friendly contact by correspondence, by conference and otherwise, with officials and employees of the other states, of the federal government, and of local units of government;

(3) To endeavor to advance cooperation between this State and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

a. The adoption of compacts;
b. The enactment of uniform or reciprocal statutes;
c. The adoption of uniform or reciprocal administrative rules and regulations;
d. The informal cooperation of governmental offices with one another;
e. The personal cooperation of governmental officials and employees with one another, individually;
f. The interchange and clearance of research and information; and
g. Any other suitable process.

(4) To study, analyze, and report to the Secretary of Administration its recommendations concerning interstate compacts affecting the interest of North Carolina and studies and reports prepared by the Council of State Governments and similar agencies; regularly to inform the members of the General Assembly and other State officials of the publications and services which the Council of State Governments makes available to them; and to attend appropriate national and regional conferences of State officials considering interstate problems of concern to North Carolina and report thereon to the Secretary;

(5) In short, to do all such acts as will, in the opinion of this Council enable this State to do its part, or more than its part, in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose;

(6) To advise the Secretary of Administration upon any matter the Secretary may refer to it; and

(7) The Council shall report to the Governor and to the legislature within 15 days after the convening of each regular legislative session. (1975, c. 879, s. 19.)

Cross Reference. — For statute declaring the Council of State Governments a governmental agency, see § 143-186.

§ 143B-380. North Carolina Council on Interstate Cooperation — members; selection; quorum; compensation. — The North Carolina Council on Interstate Cooperation of the Department of Administration shall consist of 11 members. The composition of the Council shall be as follows:

(1) President of the Senate;

(2) Speaker of the House of Representatives;

(3) Three Senators designated by the President of the Senate;

(4) Three Representatives designated by the Speaker of the House; and
(5) Three administrative officials designated by the Governor.

The initial members of the Council shall be the appointed members of the North Carolina Commission on Interstate Cooperation who shall serve for a period equal to the remainder of the current terms on the North Carolina Commission on Interstate Cooperation, all of whose terms expire June 30, 1977. (1975, c. 879, s. 20.)

§ 143B-381. North Carolina Council on Interstate Cooperation — officers. — The Governor shall biennially designate the chairman of the Council from among the legislative members of the Council. (1975, c. 879, s. 21.)

§ 143B-382. North Carolina Council on Interstate Cooperation — Senate members. — The President of the Senate shall, on or before July 1 of the year in which each regular session of the General Assembly is held, designate three members of the Senate as members of the Council on Interstate Cooperation. (1975, c. 879, s. 22.)

§ 143B-383. North Carolina Council on Interstate Cooperation — House members. — The Speaker of the House of Representatives shall, on or before July 1 of the year in which each regular session of the General Assembly is held, designate three members of the House as members of the Council on Interstate Cooperation. (1975, c. 879, s. 23.)

§ 143B-384. North Carolina Council on Interstate Cooperation — terms of members; removal; expenses; quorum; services. — Each of the Senate and House members of the Council shall serve until his successor as a member of the Council is designated. Each administrative member of the Council shall serve for a term of two years and until his successor is designated.

The Governor shall have the power to remove any of his appointees to the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 24.)

Part 7. Youth Councils.

§ 143B-385. State Youth Advisory Council — creation; powers and duties. — There is hereby created the State Youth Advisory Council of the Department of Administration. The State Youth Advisory Council shall have the following functions and duties:

(1) To advise the youth councils of North Carolina;
(2) To encourage State and local councils to take active part in governmental and civic affairs, promote and participate in leadership and citizenship programs, and cooperate with other youth-oriented groups;
(3) To receive on behalf of the Department of Administration and to recommend expenditure of gifts and grants from public and private donors;
(4) To establish procedures for the election of its youth representatives by the State Youth Council; and
(5) To advise the Secretary of Administration upon any matter the Secretary may refer to it. (1975, c. 879, s. 26.)

§ 143B-386. State Youth Advisory Council — members; selection; quorum; compensation. — The State Youth Advisory Council of the Department of Administration shall consist of 20 members. The composition and appointment of the council shall be as follows:

Ten youths to be elected by the procedure adopted by the Youth Advisory Council; and 10 adults to be appointed by the Governor.

The initial members of the Council shall be the appointed members of the Youth Advisory Board who shall serve for a period equal to the remainder of their current terms on the Youth Advisory Board. The current terms of the youth members expire July 1, 1976, the current terms of four of the adult members expire April 7, 1976, and the remaining four adult members' terms expire May 1, 1978. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be as follows:

(1) Eight youth members to serve for terms beginning on July 1, 1976, and expiring on June 30, 1977, and two additional youth members to serve for terms beginning on July 1, 1977, and expiring on June 30, 1978. At the end of the terms of office of these youth members of the Council, the appointment of their successors shall be for terms of one year and until their successors are appointed and qualify.

(2) Four adult members to serve for terms beginning on April 8, 1976, and expiring on June 30, 1979; four adult members to serve for terms beginning on May 1, 1978, and expiring on June 30, 1980; one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1978; and one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1979. At the end of the respective terms of office of these adult members of the Council, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. The total membership shall reasonably reflect the socioeconomic, ethnic, sexual and sectional composition of the State.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate an adult member of the Council to serve as chairman at the pleasure of the Governor. The Council shall elect a youth member to serve as vice-chairman for a one-year term.

A majority of the Council shall constitute a quorum for the transaction of business.

Members of the Council who are not officers or employees of the State shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 27; 1977, c. 510.)

Editor's Note. — The 1977 amendment rewrote the first three paragraphs, increasing the membership of the Council from 16 to 20 members, adding provisions for two additional youth members and two additional adult members and their terms, reducing the terms of the adult members from four years to two years, and adding the third sentence of subdivision (2) in the third paragraph.

§ 143B-387. State Youth Council. — There shall be a State Youth Council. It shall be established within one year of July 1, 1975, in accordance with the methods and procedures established by the Youth Advisory Council. The State Youth Council is authorized and empowered to do the following:

(1) To consider problems affecting youth and recommend solutions or approaches to these problems to State and local governments and their officials;

(2) To promote statewide activities for the benefit of youth; and,

(3) To elect the youth representatives to the Youth Advisory Council. (1975, c. 879, s. 28.)

§ 143B-388. Local youth councils. — The primary purpose of local youth councils is to promote participation by youth in programs affecting civic and governmental affairs. (1975, c. 879, s. 29.)

Part 8. North Carolina Marine Science Council.

§ 143B-389. North Carolina Marine Science Council — creation; powers and duties. — There is hereby created the North Carolina Marine Science Council of the Department of Administration. The North Carolina Marine Science Council shall have the following functions and duties:

(1) To encourage the use and study of the ocean, estuarine, and coastal waters of the State of North Carolina by citizens and industries of the State;

(2) To foster education and training in ocean science technology in the State of North Carolina, including extension and continuing education;

(3) To assist in maintaining liaison with the corresponding authorities of nearby coastal states;

(4) To advise in the development and maintenance of the continuing inventory of the ocean resources of the State of North Carolina and the industries and institutions that have significant competence in the science and industry of the oceans, including the personnel and facilities;

(5) To advise in the coordination of efforts toward full development of the State's marine resources with proper attention being given to the need for conservation;

(6) To coordinate plans for, and work with relevant governmental agencies in, the implementation of all federal, State, and local legislation relating to coastal and marine resources;

(7) To review all research, education, and management programs relating to coastal and marine resources and to recommend revision when appropriate; and

(8) To advise the Secretary of Administration upon any matter the Secretary may refer to it. (1975, c. 879, s. 31.)

§ 143B-390. North Carolina Marine Science Council — members; selection; quorum; compensation. — The North Carolina Marine Science Council of the Department of Administration shall consist of 25 members appointed by the Governor. The composition of the Council shall be as follows: 21 members appointed by the Governor from the public and private academic and scientific institutions in the State and from the various industries and professions in the State concerned with the exploration and use of the sea; one member representing the Department of Commerce in the area of ports and waterways; two members representing the Department of Natural Resources and Community Development in the area of coastal resources and environmental protection; and one member representing the Department of Human Resources in the area of health services. The initial members of the Council shall be the appointed members of the North Carolina Marine Science Council who shall serve for a period equal to the remainder of their current terms on the North

Carolina Marine Science Council, 12 of whose appointments expire June 17, 1977, five of whose appointments expire June 17, 1979, and four of whose appointments expire June 17, 1981. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors, with the exception of those from State agencies, shall be for terms of six years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 32; 1977, c. 464, s. 41; c. 771, s. 4.)

Editor's Note. — The first 1977 amendment substituted "Department of Commerce" for "Department of Transportation" in the second sentence.

The second 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence of the first paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 9. North Carolina Human Relations Council.

§ 143B-391. North Carolina Human Relations Council — creation; powers and duties. — There is hereby created the North Carolina Human Relations Council of the Department of Administration. The North Carolina Human Relations Council shall have the following functions and duties:

(1) To study problems concerning human relations;
(2) To promote equality of opportunity for all citizens;
(3) To promote understanding, respect, and goodwill among all citizens;
(4) To provide channels of communication among the races;
(5) To encourage the employment of qualified people without regard to race;
(6) To encourage youths to become better trained and qualified for employment;
(7) To receive on behalf of the Department of Administration and to recommend expenditure of gifts and grants from public and private donors;
(8) To enlist the cooperation and assistance of all State and local government officials in the attainment of the objectives of the Council;
(9) To assist local good neighborhood councils and biracial human relations committees in promoting activities related to the functions of the Council enumerated above; and
(10) To advise the Secretary of Administration upon any matter the Secretary may refer to it. (1975, c. 879, s. 34.)

§ 143B-392. North Carolina Human Relations Council — members; selection; quorum; compensation. — The Human Relations Council of the Department of Administration shall consist of 20 members appointed by the Governor to serve at his pleasure.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of the Department of Administration. (1975, c. 879, s. 35.)

Part 10. Council on the Status of Women.

§ 143B-393. Council on the Status of Women — creation; powers and duties. — There is hereby created the Council on the Status of Women of the Department of Administration. The Council on the Status of Women shall have the following functions and duties:

(1) To advise the Governor, the principal State departments, and the State legislature concerning the education and employment of women in the State of North Carolina; and

(2) To advise the Secretary of Administration upon any matter the Secretary may refer to it. (1975, c. 879, s. 37.)

§ 143B-394. Council on the Status of Women — members; selection; quorum; compensation. — The Council on the Status of Women of the Department of Administration shall consist of 20 members appointed by the Governor. The initial members of the Council shall be the appointed members of the Council on the Status of Women, three of whose appointments expire June 30, 1977, and four of whose appointments expire June 30, 1978. Thirteen additional members shall be appointed in 1977, six of whom shall serve terms expiring June 30, 1978, and seven of whom shall serve terms expiring June 30, 1979. At the ends of the respective terms of office of the initial members of the Council and of the 13 members added in 1977, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Members of the Council shall be representative of age, sex, ethnic and geographic backgrounds.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1975, c. 879, s. 38; 1977, c. 818.)

Editor's Note. — The 1977 amendment substituted "20 members" for "seven members" in the first sentence, rewrote the second sentence, added the present third sentence, inserted "and of the 13 members added in 1977" in the present fourth sentence and added the present sixth sentence, all in the first paragraph.

Part 10A. Office of Coordinator of Services for Victims of Sexual Assault.

§ 143B-394.1. Office of Coordinator of Services for Victims of Sexual Assault — purpose. — The ultimate goal of this Article is to establish a network of coordinated public and private services for victims of sexual assault, incorporating existing programs as well as aiding in the development of new programs. (1977, c. 997, s. 1.)

§ 143B-394.2. Office of Coordinator of Services for Victims of Sexual Assault — office created. — (a) The office of Coordinator of Services for Victims of Sexual Assault is hereby created in the Department of Administration. The office shall be under the direction and supervision of a full-time salaried State employee who shall be designated as the State Coordinator. The State Coordinator shall be appointed by the Secretary of the Department of Administration and shall receive a salary commensurate with State government pay schedules for the duties of this office, or such salary to be set by the State Personnel Board pursuant to G.S. 126-4. Necessary travel allowance or reimbursement for expenses shall be authorized for the State Coordinator in accordance with G.S. 138-6. Sufficient clerical staff shall be provided under the direction of the Secretary of the Department of Administration.

(b) This State Coordinator shall have administrative experience and the recommendation of the North Carolina Rape Crisis Association and the North Carolina Council on the Status of Women. If possible, the State Coordinator shall have public speaking experience, training in rape crisis intervention and education in a related field. (1977, c. 997, s. 1.)

§ 143B-394.3. Office of Coordinator of Services for Victims of Sexual Assault — duties and responsibilities. — The duties of the State Coordinator shall include the following:

(1) To establish an office to facilitate and coordinate all programs and services which deal with the victim of sexual assault;
(2) To research the needs of the State and already existing programs for sexual assault services;
(3) To create a liaison between public services and private services with which victims of sexual assault normally come in contact;
(4) To be an information clearinghouse on all aspects of sexual assault services;
(5) To develop model programs and training techniques to be used to train medical, legal, and psychological personnel (both in the public and private sectors) who deal with the victims of sexual assault, and to aid in implementing these programs to suit the needs of specific communities;
(6) To be available to aid and advise sexual assault services on operational and functional problems; and
(7) To develop and coordinate a public education program for the State of North Carolina on the phenomenon of sexual assault. (1977, c. 997, s. 1.)

Part 11. North Carolina Manpower Council.

§§ 143B-395, 143B-396: Repealed by Session Laws 1977, c. 771, s. 14.

Cross Reference. — As to the North Carolina Employment and Training Council in the Department of Natural Resources and Community Development, see §§ 143B-340, 143B-341.

Editor's Note. — Session Laws 1977, c. 771, s. 22, contains a severability clause.

Part 12. Standardization Committee.

§ 143B-397. Standardization Committee — creation; powers and duties. — There is hereby created the Standarization Committee of the Department of Administration.

It shall be the duty of the Standardization Committee to recommend to the Secretary of Administration the establishment and modification of standard specifications wherever feasible applying to articles purchased or leased. In the generation of recommendations for any specifications the Standardization Committee shall seek the advice, assistance and cooperation of any State department, institution or agency to ascertain its precise requirements in any given commodity. Each specification recommended for any commodity shall insofar as practicable satisfy the requirements of the majority of the State departments, institutions or agencies which use the same in common. After its adoption, by the Secretary, each standard specification shall, until revised or rescinded, apply alike in terms and effect to every State purchase of commodity described in such specifications. In the preparation of specifications the Standardization Committee shall have the power to make use of any State laboratory with or without charge for tests in making determination of quality. (1975, c. 879, s. 43.)

§ 143B-398. Standardization Committee — members; selection; quorum. — The Standardization Committee shall consist of seven members as follows:

(1) The Secretary of Administration who shall be the chairman,
(2) An engineer from the Department of Transportation to be appointed upon recommendation by the Secretary of Transportation,
(3) A representative of State or local education agencies,
(4) A representative of the State departments,
(5) A representative of the State charitable and correctional institutions, and
(6) Two members of the Advisory Budget Commission to be designated by the Governor.

Four members of said Committee shall constitute a quorum for the transaction of business, or the performance of any duties imposed upon the Committee by this Article. The Committee shall meet at such time, or times, as it shall by rule or regulation prescribe, but it may meet at other times at the call of the chairman.

The members of the Committee are appointed by the Governor to serve at the pleasure of the Governor.

All clerical and other services required by the Committee shall be supplied by the Secretary of Administration. Laboratory services will be provided by the head of the department in which the laboratory is located. (1975, c. 879, s. 44.)

Part 13. Veterans' Affairs Commission.

§ 143B-399. Veterans' Affairs Commission — creation, powers and duties. — There is hereby created the Veterans' Affairs Commission of the Department of Administration. The Veterans' Affairs Commission shall have the following functions and duties:

(1) To advise the Governor on matters relating to the affairs of veterans in North Carolina;
(2) To maintain a continuing review of the operation and budgeting of existing programs for veterans and their dependents in the State and to make any recommendations to the Governor for improvements and additions to such matters to which the Governor shall give due consideration;

(3) To serve collectively as a liaison between the Division of Veterans Affairs and the veterans organizations represented on the Commission;

(4) To promulgate rules and regulations concerning the awarding of scholarships for children of North Carolina veterans as provided by Article 4 of Chapter 165 of the General Statutes of North Carolina. The Commission shall make rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the State Board of Veterans' Affairs shall remain in full force and effect unless and until repealed or superseded by action of the Veterans Affairs Commission. All rules and regulations adopted by the Commission shall be enforced by the Division of Veterans' Affairs; and

(5) To advise the Governor on any matter the Governor may refer to it. (1973, c. 620, s. 7; 1977, c. 70, ss. 24, 25, 27; c. 622.)

Editor's Note. — The above section was formerly § 143B-252. It was recodified as § 143B-399 by Session Laws 1977, c. 70.

Session Laws 1977, c. 622, substituted "Department of Administration" for "Department of Military and Veterans Affairs" in the first sentence, substituted "Governor" for "Secretary of Military and Veterans Affairs" and for "Secretary" throughout the section, substituted "affairs of veterans in North Carolina" for "Department's activities with respect to veterans" in subdivision (1), substituted "matters" for "programs" near the end of subdivision (2) and substituted "Division of Veterans Affairs" for "Department" in subdivision (3) and for "Department of Military and Veterans Affairs" in the last sentence of subdivision (4).

Session Laws 1977, c. 637, s. 2, provided that whenever the words "Secretary of Military and Veterans Affairs" were used in the provisions of this section, the same should be deleted and the words "Secretary of the Department of Administration" should be inserted in lieu thereof. All references to the Secretary of Military and Veterans Affairs in this section, however, were eliminated by the amendment in Session Laws 1977, c. 622.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 143B-400. Veterans' Affairs Commission — members; selection; quorum; compensation. — The Veterans' Affairs Commission of the Department of Administration shall consist of one voting member from each congressional district, all of whom shall be veterans, appointed by the Governor for four-year terms. In making these appointments, the Governor shall insure that both major political parties will be continuously represented on the Veterans' Affairs Commission.

The initial members of the Commission shall be the appointed members of the current Veterans' Affairs Commission who shall serve for the remainder of their current terms and six additional members appointed by the Governor for terms expiring June 30, 1981. Thereafter, all members shall be appointed for terms of four years. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term. The Governor shall have the power to remove any member of the Commission in accordance with provisions of G.S. 143B-13.

In the event that more than 11 congressional districts are established in the State, the Governor shall on July 1 following the establishment of such additional congressional districts appoint a member of the Commission from that congressional district. If on July 1, 1977, or at any time thereafter due to congressional redistricting, two or more members of the Veterans' Affairs Commission shall reside in the same congressional district then such members shall continue to serve as members of the Commission for a period equal to the remainder of their current terms on the Commission provided that upon the expiration of said term or terms the Governor shall fill such vacancy or vacancies in such a manner as to insure that as expeditiously as possible there is one member of the Veterans' Affairs Commission who is a resident of each congressional district in the State.

The Governor shall designate from the membership of the Commission a chairman and vice-chairman of the Commission who shall serve at the pleasure of the Governor. The Secretary of the Department of Administration or his designee shall serve as secretary of the Commission.

Members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business.

The Veterans' Affairs Commission shall meet at least twice a year and may hold special meetings at any time or place within the State at the call of the chairman, at the call of the Secretary of the Department of Administration or upon the written request of at least six members.

All clerical and other services required by the Commission shall be provided by the Secretary of the Department of Administration. (1973, c. 620, s. 8; 1977, c. 70, ss. 24, 25, 27; c. 637, s. 1.)

Editor's Note. — The above section was formerly § 143B-253. It was recodified as § 143B-400 by Session Laws 1977, c. 70.

Session Laws 1977, c. 637, s. 1, inserted "of the Department of Administration," and substituted "one voting member from each congressional district" for "five voting members" and "four-year" for "five-year" in the first sentence of the first paragraph, rewrote the second paragraph, added the third paragraph and rewrote the present third paragraph, inserted "at the call of the Secretary of the Department of Administration" and substituted "six members" for "three members" in the next-to-last paragraph, substituted "Secretary of the Department of Administration" for "Secretary of Military and Veterans Affairs" in the last paragraph and made minor changes in wording throughout the section.

Session Laws 1977, c. 637, s. 4 provides: "The terms of any of the current members of the Veterans' Affairs Commission which expire on May 16 of any year are hereby extended to expire on June 30 of such particular year."

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 143B-401. Veterans' Affairs Commission Advisory Committee — members; compensation. — The department commander or official head of each veterans' organization which has been chartered by an act of the United States Congress and which is legally constituted and operating in this State pursuant to said charter shall constitute an Advisory Committee to the Veterans' Affairs Commission. Members of the Veterans' Affairs Commission Advisory Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1977, c. 637, s. 3.)

Part 14. Advocacy Council for the Handicapped.

§ 143B-402. Advocacy Council for the Mentally Ill and Developmentally Disabled — creation; powers; duties. — There is hereby created in the Department of Administration an Advocacy Council for the Mentally Ill and Developmentally Disabled. The Council shall have the following functions and duties:

(1) To provide for and supervise a statewide program of protection and advocacy in accordance with section 113 of Public Law 94-103, Developmental Disabilities Services and Facilities Construction Act, as amended;

(2) To pursue legal, administrative, or other appropriate remedies to insure the protection of the rights of all developmentally and mentally disabled persons who are receiving treatment, services, or habilitation from any State, local, or area program;

(3) To review and recommend changes in all laws, rules, regulations, programs and policies of this State or any agency or subdivision thereof to insure the rights of the mentally ill and developmentally disabled are safeguarded;

(4) To investigate complaints concerning the violation of the rights of the mentally ill and developmentally disabled and to take appropriate action;

(5) To contract with public agencies or private nonprofit corporations to fulfill any of the functions and duties provided herein;

(6) To provide an annual report to the Governor and the Secretary of Administration on the status, effectiveness, and needs of the protection and advocacy program; and

(7) To perform such other functions as are necessary to protect the rights of the mentally ill and developmentally disabled or as may be assigned by the Secretary of Administration. (1977, c. 822, s. 1.)

§ 143B-403. Advocacy Council for the Mentally Ill and Developmentally Disabled — members; selection; quorum; compensation; meetings; staff; etc. — The Advocacy Council for the Mentally Ill and Developmentally Disabled, of the Department of Administration, shall consist of 11 members. The composition and appointment of the Council shall be as follows:

Three members appointed by the Governor from legal, citizen, or advisory groups; two members appointed by the Governor who are parents of developmentally disabled persons; one member appointed by the Governor who is developmentally disabled; one member appointed by the Governor who has been a volunteer advocate for the developmentally disabled.

Two members appointed by the Speaker of the House from the members of the House of Representatives, who have demonstrated an interest in the mentally ill and developmentally disabled.

Two members appointed by the President of the Senate from the members of the Senate, who have demonstrated an interest in the mentally ill and developmentally disabled.

Provided no members shall be providers of services to the mentally ill and developmentally disabled or representatives of public agencies.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Initial appointments shall be made as soon as practicable after the effective date of this Part but no later than July 1, 1977, for terms to expire June 30, 1980. At the end of the terms of the initial members, the appointment of the successors of the members appointed by the Governor shall be for terms of four years and until their successors are appointed and qualify. The appointment of the successors of the initial members appointed by the Speaker of the House and President of the Senate shall be for terms of two years and until their successors are appointed and qualify. Appointment to fill a vacancy on the Council created by resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor may remove any member of the Council appointed by the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5, or travel and subsistence expenses under G.S. 120-3.1 as appropriate.

The Council shall meet at least once a quarter and at such other times as called by the chairman or upon written request of at least six members. A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration.

The staff of the Developmental Disabilities Council of the Department of Human Resources shall provide additional planning assistance when requested by the Advocacy Council. (1977, c. 822, s. 1.)

Part 15. North Carolina State Commission of Indian Affairs.

§ 143B-404. North Carolina State Commission of Indian Affairs — creation; name. — There is hereby created and established a commission to be known as the North Carolina State Commission of Indian Affairs of the Department of Administration. (1977, c. 849, s. 1.)

§ 143B-405. North Carolina State Commission of Indian Affairs — purposes for creation. — The purposes of the Commission shall be to deal fairly and effectively with Indian affairs; to bring local, State, and federal resources into focus for the implementation or continuation of meaningful programs for Indian citizens of the State of North Carolina; to provide aid and protection for Indians as needs are demonstrated; to prevent undue hardships; to assist Indian communities in social and economic development; and to promote recognition of and the right of Indians to pursue cultural and religious traditions considered by them to be sacred and meaningful to Native Americans. (1977, c. 849, s. 1.)

§ 143B-406. North Carolina State Commission of Indian Affairs — duties; use of funds. — It shall be the duty of the Commission to study, consider, accumulate, compile, assemble and disseminate information on any aspect of Indian affairs; to investigate relief needs of Indians of North Carolina and to provide technical assistance in the preparation of plans for the alleviation of such needs; to confer with appropriate officials of local, State, and federal governments and agencies of these governments, and with such congressional committees that may be concerned with Indian affairs to encourage and implement coordination of applicable resources to meet the needs of Indians in North Carolina; to cooperate with and secure the assistance of the local, State, and federal governments or any agencies thereof in formulating any such programs, and to coordinate such programs with any programs regarding Indian affairs adopted or planned by the federal government to the end that the State Commission of Indian Affairs secure the full benefit of such programs; to review all proposed or pending State legislation and amendments to existing State legislation affecting Indians in North Carolina; to conduct public hearings on matters relating to Indian affairs and to subpoena any information or documents deemed necessary by the Commission; to study the existing status of recognition of all Indian groups, tribes, and communities presently existing in the State of North Carolina; and to establish appropriate procedures to provide for legal recognition by the State of presently unrecognized groups, and to initiate procedures for their recognition by the federal government. (1977, c. 849, s. 1.)

§ 143B-407. North Carolina State Commission of Indian Affairs — membership; term of office; chairman; compensation. — (a) The State Commission of Indian Affairs shall consist of the Speaker of the House of Representatives, the Lieutenant Governor, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Natural Resources and Community Development, and the Commissioner of Labor. Fifteen Indian members shall be selected by tribal or community consent from among the Coharie, Cumberland, Haliwa, Lumbee, and Waccamaw Siouan, and the Native Americans located in Guilford and Mecklenburg Counties. The Coharie shall have two members; the Cumberland, two; the Haliwa, two; the Lumbees, three; the Waccamaw Siouan, two; the Guilford Native Americans, two; and the Metrolina Native Americans, two.

If the Cherokees should choose to participate, then they shall have two members on the board of directors. The total membership will be 17.

(b) Members serving by virtue of their office within State government shall serve so long as they hold that office. Members representing Indian tribes and groups shall be elected by the tribe or group concerned and shall serve for three-year terms, except that at the first election of Commission members by tribes and groups, one member from each tribe or group shall be elected to a one-year term, one member from each tribe or group to a two-year term, and one member from each tribe or group to a three-year term. Thereafter, Commission members will be elected to three-year terms. All members shall hold their offices until their successors are appointed and qualified. Vacancies occurring on the Commission shall be filled by the tribal council or governing body concerned. Any member appointed to fill a vacancy shall be appointed for the remainder of the term of the member causing the vacancy. The Governor shall appoint a chairman of the Commission from among the Indian members of the Commission, subject to ratification by the full Commission.

(c) Commission members who are seated by virtue of their office within the State government shall be compensated at the rate specified in G.S. 138-6. Commission members who are members of the General Assembly shall be compensated at the rate specified in G.S. 120-3.1. Indian members of the Commission shall be compensated at the rate specified in G.S. 138-5. (1977, c. 771, s. 4; c. 849, s. 1.)

Editor's Note. — Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Natural and Economic Resources" in this section as enacted by Session Laws 1977, c. 849.

§ 143B-408. North Carolina State Commission of Indian Affairs — meetings; quorum; proxy vote. — (a) The Commission shall meet quarterly, and at any other such time that it shall deem necessary. Meetings may be called by the chairman or by a petition signed by a majority of the members of the Commission. Ten days' notice shall be given in writing prior to the meeting date.

(b) Simple majority of the Indian members of the Commission and two members by virtue of their office within State government must be present to constitute a quorum.

(c) Proxy vote shall not be permitted. (1977, c. 849, s. 1.)

§ 143B-409. North Carolina State Commission of Indian Affairs — reports. — The Commission shall prepare a written annual report giving an account of its proceedings, transactions, findings, and recommendations. This report shall be submitted to the Governor and the legislature. The report will become a matter of public record and will be maintained in the State Historical Archives. It may also be furnished to such other persons or agencies as the Commission may deem proper. (1977, c. 849, s. 1.)

Editor's Note. — Session Laws 1977, c. 849, contained two identical sections, numbered §§ 143B-400.6 and 143B-400.9, which have been codified above as § 143B-409.

§ 143B-410. North Carolina State Commission of Indian Affairs — fiscal records; clerical staff. — Fiscal records shall be kept by the Secretary of Administration and will be subject to annual audit by a certified public accountant. The audit report will become a part of the annual report and will be submitted in accordance with the regulations governing preparation and submission of the annual report. (1977, c. 849, s. 1.)

§ 143B-411. North Carolina State Commission of Indian Affairs — executive director; employees. — The Commission may, subject to legislative or other funds that would accrue to the Commission, employ an executive director to carry out the day-to-day responsibilities and business of the Commission. The executive director, also subject to legislative or other funds that would accrue to the Commission, may hire additional staff and consultants to assist in the discharge of his responsibilities, as determined by the Commission. The executive director shall not be a member of the Commission, and should be of Indian extraction. (1977, c. 849, s. 1.)

Part 16. Governor's Council on Employment of the Handicapped.

§ 143B-412. Governor's Council on Employment of the Handicapped — creation; powers and duties. — There is hereby created the Governor's Council on the Employment of the Handicapped of the Department of Administration. The Governor's Council on the Employment of the Handicapped shall have the following functions and duties:

(1) To advise and assist the Department on the continuing program to promote the employment of the physically, mentally, emotionally, and otherwise handicapped citizens of North Carolina by creating statewide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with all public and private groups and individuals in this field;

(2) To work in close cooperation with the President's Committee on the Employment of the Physically Handicapped to carry out more effectively the purpose of Article 29A of Chapter 143 of the General Statutes, and with State and federal agencies having responsibilities for employment and rehabilitation of the handicapped;

(3) To promote and encourage the holding of appropriate ceremonies throughout the State during the "National Employ the Physically Handicapped Week," the purpose of which ceremony shall be to enlist public support for interest in the employment of the physically handicapped; and

(4) The Council shall advise the Secretary of Administration upon any matter the Secretary may refer to it. (1973, c. 476, s. 177; 1977, c. 872, s. 2.)

Cross Reference. — As to powers and duties of the Governor's Council on Employment of the Handicapped, see also § 143-283.1 et seq.

Editor's Note. — The above section was formerly § 143B-184. It was rewritten and recodified in this Article by Session Laws 1977, c. 872, s. 2.

§ 143B-413. Governor's Council on Employment of the Handicapped — members; selection; quorum; compensation. — The Governor's Council on Employment of the Handicapped of the Department of Administration shall consist of 22 members appointed by the Governor. The composition of the Council shall be as follows: four members from State government agencies as follows: the Commissioner of Labor, the Commissioner of Insurance, the Chairman of the Employment Security Commission and the Secretary of the Department of Human Resources or his designee; and 18 members to be appointed by the Governor.

The initial members of the Council shall be the members of the former Governor's Council on Employment of Handicapped of the Department of Human Resources whose terms shall expire on the dates they would have, had said Council of Department of Human Resources not been transferred. At the end of the respective terms of office of the initial members of the Council, the appointment of all members, with the exception of those from State agencies, shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor may remove any member of the Council appointed by the Governor.

The Governor shall designate one member of the Council to serve as chairman at his pleasure.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1973, c. 476, s. 178; 1977, c. 872, s. 2.)

Editor's Note. — The above section was formerly § 143B-185. It was rewritten and recodified in this Article by Session Laws 1977, c. 872, s. 2.

Part 17. Governor's Advocacy Council on Children and Youth.

§ 143B-414. Governor's Advocacy Council on Children and Youth — creation; powers and duties. — There is hereby created the Governor's Advocacy Council on Children and Youth of the Department of Administration. The Council shall have the following functions and duties:

(1) To act as an advocate for children and youth within State and local governments, and with private agencies serving children and youth;

(2) To provide assistance in the development and coordination of child advocacy systems at the regional and local levels within the State;

(3) To perform a continuing review of existing programs of State government for children and youth and their families;

(4) To, in cooperation with State, local or private agencies, identify needs of children and youth and their families that are not currently being met and recommend new programs or improvement of existing programs;

(5) To review any new programs affecting children and youth proposed by any State agency and recommend changes to avoid duplication of services, to promote better planning, or otherwise to make more effective use of available resources;

(6) To meet at least annually with the Governor and present a written report concerning the health and well-being of North Carolina's children and the effectiveness of current programs and the need for new programs for children and youth;

(7) To provide information to the general public and State, local and private agencies serving children and youth and their families concerning the activities and findings of the Council; and

(8) To perform such other functions as may be assigned to it by the Secretary of Administration or any legislative committee. (1973, c. 476, s. 180; 1977, c. 872, s. 6.)

Editor's Note. — The above section was formerly § 143B-186. It was rewritten and recodified in this Article by Session Laws 1977, c. 872, s. 6.

§ 143B-415. Governor's Advocacy Council on Children and Youth — members; selection; quorum; compensation. — The Governor's Advocacy Council on Children and Youth shall consist of 17 members. The composition of the Council shall be as follows: two members appointed by the President of the Senate from the membership of the Senate; two members selected by the Speaker of the House of Representatives from the membership of the House of Representatives; 13 members appointed by the Governor.

In selecting the 13 members of the Council, the Governor shall select nine public-spirited adult citizens who have an interest in and knowledge of children and youth, persons who work with children or representatives of organizations concerned with problems of children and youth. The remaining four members to be appointed by the Governor shall consist of two youths of each sex who are 18 years of age or under at the time of their appointments.

The initial members of the Council shall be the members of the former Governor's Advocacy Council on Children and Youth of the Department of Human Resources whose terms shall expire on the date they would have, had said Council of the Department of Human Resources not been transferred. At the end of the respective terms of office of the initial members of the Council, the appointment of all members shall be as provided in this section and for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, death, dismissal, or disability of a member shall be for the balance of the unexpired term.

The Governor may remove any member of the Council appointed by the Governor.

The Governor shall designate from the membership of the Council a chairman and a vice-chairman to serve at his pleasure.

The Council shall meet at least quarterly and upon the call of the chairman or upon written request of at least nine members.

The members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1973, c. 476, s. 181; 1977, c. 872, s. 6.)

Editor's Note. — The above section was formerly § 143B-187. It was rewritten and recodified in this Article by Session Laws 1977, c. 872, s. 6.

§ 143B-416. Governor's Advocacy Council on Children and Youth — access to information. — Unless otherwise prohibited by law, every State and local agency, department, board, commission, school, or corporation that supervises, administers, or otherwise directs programs or services for children and youth shall provide the Council with any requested information relating to such programs and services. (1977, c. 872, s. 6.)

Part 18. North Carolina Internship Council.

§ 143B-417. North Carolina Internship Council — creation; powers and duties. — There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of the following offices or departments:

a. Office of the Governor

b. Department of Administration
c. Department of Correction
d. Department of Cultural Resources
e. Department of Revenue
f. Department of Transportation
g. Department of Natural Resources and Community Development
h. Department of Commerce
i. Department of Crime Control and Public Safety
j. Department of Human Resources
k. Office of the Lieutenant Governor
l. Office of the Secretary of State
m. Office of the State Auditor
n. Office of the State Treasurer
o. Department of Public Education
p. Department of Justice
q. Department of Agriculture
r. Department of Labor
s. Department of Insurance;

(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in (1). (1977, c. 771, s. 4; c. 967.)

Editor's Note. — Pursuant to Session Laws 1977, c. 771, s. 4, "Natural Resources and Community Development" has been substituted for "Natural and Economic Resources" in subdivision (1)g of this section as enacted by Session Laws 1977, c. 967.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 143B-418. North Carolina Internship Council — members; selection; quorum; compensation; clerical, etc., services. — The North Carolina Internship Council shall consist of 17 members, including the Secretary of Administration or his designee, one member to be designated by and to serve at the pleasure of the Lieutenant Governor, one member to be designated by and to serve at the pleasure of the Speaker of the House of Representatives and the following 14 members to be appointed by the Governor to a two-year term commencing on July 1 of odd-numbered years: two representatives of community colleges and technical institutes; four representatives of The University of North Carolina system; two representatives of private colleges or universities; three representatives of colleges or universities with an enrollment of less than 5,000 students; and three former interns.

At the end of the respective terms of office of the 14 members of the Council appointed by the Governor, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. The Governor may remove any member appointed by the Governor.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Council shall meet at the call of the chairman or upon written request of at least five members.

The Governor shall designate a member of the Council as chairman to serve at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration. (1977, c. 967.)

§ 143B-419. North Carolina Internship Council — committees for screening applications. — The North Carolina Internship Council may designate one representative from each office or department enumerated in G.S. 143B-417 to serve on a committee to assist pursuant to guidelines adopted by the Council, in the screening and selection of applicants for student internships. (1977, c. 967.)

Part 19. Jobs for Veterans Committee.

§ 143B-420. Governor's Jobs for Veterans Committee — creation; appointment, organization, etc.; duties. — (a) There is hereby created and established in the North Carolina Department of Administration, Division of Veterans Affairs, a committee to be known as the Governor's Jobs for Veterans Committee, with such members as the Governor shall appoint. Members of the Committee shall serve at the pleasure of the Governor. The Secretary of Administration, with the concurrence of the Governor, shall appoint a chairman to administer this Committee who shall be subject to the direction and supervision of the Secretary. The chairman shall serve at the pleasure of the Secretary. The chairman shall devote full time to his duties of office.

(b) Subject to the general supervision of the Secretary, the duties of the chairman shall include but not be limited to the following:

(1) Serving as a liaison between the Office of the Governor and all State agencies to insure that veterans receive the employment preference to which they are legally entitled and that such State agencies list available jobs with appropriate public employment services;

(2) Evaluating existing programs designed to benefit veterans and submitting reports and recommendations to the Governor and Secretary;

(3) Developing and furthering favorable employer attitudes toward the employment of veterans by appropriate promulgation of information concerning veterans and the functions of the Committee;

(4) Serving as a liaison between the Committee and communities throughout the State to the end that civic committees and volunteer groups are formed and utilized to promote the objectives of the Committee;

(5) Assisting employers in properly designing affirmative action plans as they relate to handicapped and Vietnam-era veterans;

(6) Serving as a liaison between veterans and State agencies on questions regarding the employment practices of such State agencies. (1977, c. 1032.)

§ 143B-421. Governor's Jobs for Veterans Committee — authority to receive grants-in-aid. — The Committee is hereby authorized to receive grants-in-aid from the federal government and charitable organizations for carrying out its duties. (1977, c. 1032.)

§§ 143B-422 to 143B-426: Reserved for future codification purposes.

ARTICLE 10.

Department of Commerce.

Part 1. General Provisions.

§ 143B-427. Department of Commerce — creation. — There is hereby recreated and reconstituted a Department to be known as the "Department of Commerce," with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article. (1977, c. 198, s. 1.)

Editor's Note. — Session Laws 1977, c. 198, ss. 28 and 29 provide: "Sec. 28. All records, personnel, property, and unexpended balances of appropriations to any agency or subunit transferred by this act to the recreated and reconstituted Department of Commerce are hereby transferred in accordance with the provisions of this act to the said Department of Commerce.

"Sec. 29. All transfers of personnel, equipment, appropriations and functions of an agency or division transferred by this act to the recreated and reconstituted Department of Commerce shall be completed by July 1, 1977, but the Secretary of Commerce shall have the authority over such personnel, equipment, appropriations and functions transferred by this act upon the effective date of this act. Nothing in this section is intended to supersede G.S. 143B-405(3) [143B-431], as added by this act, or Chapter 65 of the Session Laws of 1977."

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-428. Department of Commerce — declaration of policy. — It is hereby declared to be the policy of the State of North Carolina to actively encourage the expansion of existing environmentally sound North Carolina industry; to actively encourage the recruitment of environmentally sound national and international industry into North Carolina through industrial recruitment efforts and through effective advertising, with an emphasis on high-wage-paying industry; to promote the development of North Carolina's labor force to meet the State's growing industrial needs; to promote the growth and development of our travel and tourist industries; to promote the development of our State ports; to promote the management of North Carolina's energy resources and the development of a State energy policy; and to assure throughout State government, the coordination of North Carolina's economic development efforts. (1977, c. 198, s. 1.)

§ 143B-429. Department of Commerce — duties. — It shall be the duty of the Department of Commerce to provide for and promote the implementation of the declared policy of the State of North Carolina as provided in G.S. 143B-428, to promote and assist in the total economic development of North Carolina in accord with such declared policy and to perform such other duties and functions as are conferred by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State. (1977, c. 198, s. 1.)

§ 143B-430. Secretary of Commerce — powers and duties. — The head of the Department of Commerce is the Secretary of Commerce. The Secretary of Commerce shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State. The Secretary of Commerce shall be responsible for effectively and efficiently organizing the Department of Commerce to promote the policy of the State of North Carolina as outlined in G.S. 143B-428 and to promote statewide economic development in accord with that policy. Except as otherwise specificially provided in this Article and in Article 1 of this Chapter, the functions, powers, duties and obligations of every agency or subunit in the Department of Commerce shall be prescribed by the Secretary of Commerce. (1977, c. 198, s. 1.)

§ 143B-431. Department of Commerce — functions. — The functions of the Department of Commerce, except as otherwise expressly provided by Article 1 of this Chapter or by the Constitution of North Carolina, shall include:

(1) All of the executive functions of the State in relation to economic development including by way of enumeration and not of limitation, the expansion and recruitment of environmentally sound industry, labor force development, the promotion and growth of the travel and tourism industries, the development of our State's ports, energy resource management and energy policy development;

(2) All functions, powers, duties and obligations heretofore vested in any agency enumerated in Article 15 of Chapter 143A, to wit:
   a. The State Board of Alcoholic Control,
   b. The North Carolina Utilities Commission,
   c. The Employment Security Commission,
   d. The North Carolina Industrial Commission,
   e. State Banking Commission and the Commissioner of Banks,
   f. Savings and Loan Association Division,
   g. The State Savings and Loan Commission,
   h. Credit Union Commission,
   i. The North Carolina Milk Commission,
   j. The North Carolina Mutual Burial Association Commission,
   k. The North Carolina Rural Electrification Authority,
   l. The North Carolina State Ports Authority,

all of which enumerated agencies are hereby expressly transferred by a type II transfer, as defined by G.S. 143A-6, to this recreated and reconstituted Department of Commerce; and,

(3) All other functions, powers, duties and obligations as are conferred by by this Chapter, delegated or assigned by the Governor and conferred by the Constitution and laws of this State.

Any agency transferred to the Department of Commerce by a type II transfer, as defined by G.S. 143A-6, shall have the authority to employ, direct and supervise professional and technical personnel, and such agencies shall not be accountable to the Secretary of Commerce in their exercise of quasi-judicial powers authorized by statute, notwithstanding any other provisions of this Chapter, provided that the authority of the North Carolina State Ports Authority to employ, direct and supervise personnel shall be as provided in Part 10 of this Article. (1977, c. 198, s. 1.)

Editor's Note. — Sections 143A-171 to 143A-180 and 143A-182 to 143A-185.1, included in Article 15 of Chapter 143A, referred to in subdivision (2), were repealed by Session Laws 1977, c. 198, s. 25. Sections 143A-180.1, 143A-180.2, and 143A-181, also included in Article 15, were recodified as §§ 143B-448, 143B-449, and 143B-439, respectively, by Session Laws 1977, c. 198, s. 26. The same 1977 act enacted this Article.

§ 143B-432. Transfers to Department of Commerce. — The Division of Economic Development of the Department of Natural and Economic Resources, the Science and Technology Committee of the Department of Natural and Economic Resources, the Science and Technology Research Center of the Department of Natural and Economic Resources, and the North Carolina National Park, Parkway and Forests Development Council of the Department of Natural and Economic Resources are each hereby transferred to the Department of Commerce by a type I transfer, as defined in G.S. 143A-6. (1977, c. 198, s. 1.)

Editor's Note. — Because this section relates to past events, the title of the Department of Natural and Economic Resources has not been changed to "Department of Natural Resources and Community Development" pursuant to Session Laws 1977, c. 771, s. 4.

§ 143B-433. Department of Commerce — organization. — The Department of Commerce shall be organized to include:

(1) The State Board of Alcoholic Control,
(2) The North Carolina Utilities Commission,
(3) The Employment Security Commission,
(4) The North Carolina Industrial Commission,
(5) State Banking Commission,
(6) Savings and Loan Association Division,
(7) The State Savings and Loan Commission,
(8) Credit Union Commission,
(9) The North Carolina Milk Commission,
(10) The North Carolina Mutual Burial Association Commission,
(11) North Carolina Cemetery Commission,
(12) The North Carolina Rural Electrification Authority,
(13) Science and Technology Committee,
(14) North Carolina Science and Technology Research Center,
(15) The North Carolina State Ports Authority,
(16) North Carolina National Park, Parkway and Forests Development Council,
(17) Economic Development Board,
(18) Labor Force Development Council,
(19) Energy Policy Council,
(20) Energy Division,
(21) Navigation and Pilotage Commissions established by Chapter 76 of the General Statutes,

and such divisions as may be established pursuant to Article 1 of Chapter. (1977, c. 198, s. 1.)

Part 2. Economic Development.

§ 143B-434. Economic Development Board — creation, duties, membership. — (a) There is hereby created within the Department of Commerce an Economic Development Board which, in conjunction with the Secretary of Commerce, shall be responsible for promoting the economic development of North Carolina in accord with the policy of the State of North Carolina as set out in G.S. 143B-428. In conjunction with the Secretary of Commerce, the Economic Development Board shall formulate a program for the economic development of the State of North Carolina and assist the Secretary of Commerce in carrying out his duties and powers as the chief economic development spokesman and administrator for the State in matters relating to the expansion of existing industry, the recruitment of new industry and the expansion of the travel and tourism industries. The Secretary of Commerce shall prepare a budget, which shall be subject to the approval of the Economic Development Board, for each division of the Department of Commerce concerned with the expansion of existing industry, the recruitment of new industry and the expansion of the travel and tourism industries. The Secretary of Commerce, with the approval of the Economic Development Board, shall hire the head of each such division and each such person shall serve at the pleasure of the Secretary of Commerce. The Economic Development Board shall meet at least bimonthly at the call of the chairman of the Economic Development Board or the Secretary of Commerce.

The Economic Development Board shall consist of 25 members. The Secretary of Commerce, the Lieutenant Governor, and the Speaker of the House of

Representatives shall be members of the Economic Development Board. The Governor shall appoint 22 members to the Board.

The initial appointments by the Governor shall be made on or after the date of ratification, 11 terms to expire July 1, 1979, and 11 terms to expire on July 1, 1981. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of four years. Any vacancy occurring in the membership of the Economic Development Board appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor shall have the authority to remove any member of the Economic Development Board appointed by the Governor.

The Governor shall designate from among the members of the Economic Development Board a chairman and a vice-chairman. The Secretary of Commerce or his designee shall serve as Secretary of the Economic Development Board. If a vacancy occurs in the office of the Lieutenant Governor, the President pro tempore shall fill the vacancy. If a vacancy occurs in the office of the Speaker of the House of Representatives, the Speaker pro tempore shall fill the vacancy.

The members of the Economic Development Board appointed by the Governor shall receive per diem and necessary travel and subsistence expenses payable to members of State boards and agencies generally pursuant to G.S. 138-5 and 138-6, as the case may be; provided, however, that the chairman of the Economic Development Board and the Lieutenant Governor shall not be entitled to receive per diem in addition to salary. The members of the Economic Development Board who are members of the General Assembly shall not receive per diem but shall receive necessary travel and subsistence expenses at rates prescribed by G.S. 120-3.1.

(b) All clerical and other services required by the Economic Development Board shall be supplied by the Secretary of Commerce.

(c) It shall be the duty of the chairman of the Economic Development Board:

(1) To organize the work of the Economic Development Board into committees with respect to the divisions of the Department of Commerce concerned with the expansion of existing industry, the recruitment of new industry and the expansion of the travel and tourism industries and

(2) To assign responsibilities to each committee.

The salary of the chairman of the Economic Development Board shall be set by the Governor with the approval of the Advisory Budget Commission. (1977, c. 198, s. 1.)

§ 143B-435. Publications. — The Department of Commerce may also cause to be prepared for publication, from time to time, reports and statements, with illustrations, maps and other descriptions, which may adequately set forth the natural and material resources of the State and its industrial and commercial developments, with a view to furnishing information to educate the people with reference to the material advantages of the State, to encourage and foster existing industries, and to present inducements for investment in new enterprises. Such information shall be published and distributed as the Department of Commerce may direct, at the expense of the State as other public documents. (1925, c. 122, s. 11; 1973, c. 1262, s. 28; 1977, c. 198, ss. 20, 26.)

Editor's Note. — The above section was formerly § 113-14. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Department of Commerce" for "Department of Natural and Economic Resources" in two places.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-436. Advertising of State resources and advantages. — It is hereby declared to be the duty of the Department of Commerce to map out and to carry into effect a systematic plan for the nationwide advertising of North Carolina, properly presenting, by the use of any available advertising media, the true facts concerning the State of North Carolina and all of its resources. (1937, c. 160; 1953, c. 808, s. 4; 1973, c. 1262, s. 86; 1977, c. 198, ss. 20, 26.)

Editor's Note. — The above section was formerly § 113-15. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Department of Commerce" for "Department of Natural and Economic Resources" near the beginning of the section.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-437. Investigation of impact of proposed new and expanding industry. — The Department of Commerce shall conduct an evaluation in conjunction with the Department of Natural Resources and Community Development of the effects on the State's natural and economic environment of any new or expanding industry or manufacturing plant locating in North Carolina. (1971, c. 824; 1973, c. 1262, ss. 28, 86; 1977, c. 198, ss. 19, 26; c. 771, s. 4.)

Editor's Note. — The above section was formerly § 113-15.2. It was rewritten by Session Laws 1977, c. 198, s. 19, and recodified in this Article by s. 26 of the same act.

Session Laws 1977, c. 771, s. 4, amended this section by substituting "Department of Natural Resources and Community Development" for "Department of Natural and Economic Resources."

Session Laws 1977, c. 198, s. 31, and c. 771, s. 22, contain severability clauses.

Part 3. Labor Force Development.

§ 143B-438. Labor Force Development Council — creation, duties and responsibilities. — (a) There is hereby created within the Department of Commerce a Labor Force Development Council, hereinafter referred to as the Council, to be responsible for advising and assisting the Secretary of Commerce in developing and carrying out policies and programs related to the development and utilization of the labor force to support industrial and economic expansion in North Carolina. The Council shall be responsible for:

(1) Formulating and recommending to the Secretary of Commerce and the Governor labor force policies and objectives to support industrial expansion;

(2) Providing for the effective participation of leading business, labor and education leaders in developing active support for policy and programs that will contribute to economic expansion and development of labor force capabilities to support industrial expansion;

(3) Making recommendations to appropriate State agencies, the Governor, and the citizens of the State on improving the effectiveness of employment training and related labor force development services to support industrial expansion efforts; and

(4) Advising and assisting the Secretary of Commerce in such additional areas that may be deemed appropriate by the Secretary of Commerce.

(b) The Council shall consist of 13 members. The Secretary of Commerce shall be a member. Twelve members shall be appointed by the Governor, at least one of whom shall represent the Department of Community Colleges. Initial terms of office for the 12 members appointed by the Governor shall be as follows: Three members shall be appointed for terms ending July 1, 1979; three members for terms ending July 1, 1980, and six members for terms ending July 1, 1981. Subsequent appointments shall be for four years. Any vacancy occurring in the membership of the Council shall be filled by appointment of the Governor for the unexpired term. The Governor shall have the authority to remove any member.

(c) The Secretary of Commerce shall serve as chairman of the Council. The Secretary of Commerce shall be responsible for establishing operating procedures, providing clerical and other services required by the Council, and calling meetings of the Council, which shall meet not less than annually. Members shall receive the per diem and reimbursement for necessary expenses payable to members of boards and agencies generally pursuant to G.S. 138-5, 138-6 or G.S. 120-3.1. (1977, c. 198, s. 1.)

Part 4. Credit Union Commission.

§ 143B-439. Credit Union Commission. — (a) There shall be created in the Department of Commerce a Credit Union Commission which shall consist of seven members. The members of the Credit Union Commission shall elect one of its members to serve as chairman of the Commission to serve for a term to be specified by the Commission. On the initial Commission three members shall be appointed by the Governor for terms of two years and three members shall be appointed by the Governor for terms of four years. Thereafter all members of the Commission shall be appointed by the Governor for terms of four years. The Governor shall appoint the seventh member for the same term and in the same manner as the other six members are appointed. In the event of a vacancy on the Commission the Governor shall appoint a successor to serve for the remainder of the term. Four members of the Commission shall be persons who have had three years' or more experience as a credit union director or in management of state-chartered credit unions. No two persons on the Commission shall be residents of the same senatorial district. No person on the Commission shall be on a board of directors or employed by another type of financial institution. The Commission shall meet at least every six months, or more often upon the call of the chairman of the Credit Union Commission or any three members of the Commission. A majority of the members of the Commission shall constitute a quorum. The members of the Commission shall be reimbursed for expenses incurred in the performance of their duties under this Chapter as prescribed in G.S. 138-5.

(b) The relationship between the Secretary of Commerce and the Credit Union Commission shall be as defined for a type II transfer under this Chapter.

(c) The Credit Union Commission is hereby vested with full power and authority to review, approve, or modify any action taken by the Administrator of Credit Unions in the exercise of all powers, duties, and functions vested by law in or exercised by the Administrator of Credit Unions under the credit union laws of this State.

An appeal may be taken to the Commission from any finding, ruling, order, decision or the final action of the Administrator by any credit union which feels aggrieved thereby. Notice of such appeal shall be filed with the chairman of the Commission within 30 days after such finding, ruling, order, decision or other action, and a copy served upon the Administrator. Such notice shall contain a brief statement of the pertinent facts upon which such appeal is grounded. The Commission shall fix a date, time and place for hearing said appeal, and shall notify the credit union or its attorney of record thereof at least 30 days prior to the date of said hearing. (1971, c. 864, s. 17; 1973, cc. 97, 1254; 1975, c. 709, ss. 4-6; 1977, c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143A-181. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

The 1975 amendment, in subsection (a), rewrote the second sentence, inserted the present fifth sentence, and substituted "chairman of the Credit Union Commission" for "Secretary of Commerce" in the present tenth sentence.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Part 5. Science and Technology Committee.

§ 143B-440. Science and Technology Committee — creation; powers and duties. — There is hereby created the Science and Technology Committee of the Department of Commerce. The Committee shall have the following functions and duties:

(1) The Committee shall be responsible for the allocation of funds for, but not necessarily limited to, such objects as grants for scientific engineering or technological projects, the support of scientific or research personnel, the purchase of equipment or supplies, the construction or modification of facilities, and the employment of consultants. In general, such allocations will be made for the support of activities, equipment and facilities in the space and associated science fields relevant to the objectives of the Committee which are associated with the existing public or private agencies in the State, such as the public and private institutions of higher education, the Research Triangle Institute and similar entities.

(2) The Committee's activities shall be centered in the Research Triangle, and will be closely allied to the Research Triangle Institute.

(3) The Committee shall encourage liaison between industry, educational institutions, the Research Triangle of North Carolina, and federal agencies, such as the National Aeronautics and Space Administration, the Atomic Energy Commission, the Department of Defense, the National Science Foundation, and the National Institute of Health.

(4) The Committee shall hold regular meetings to inform industry of the possible space and nuclear applications which can accelerate the growth of the North Carolina industrial economy.

(5) The Committee shall encourage the cooperation of the State's industrial community, to the end that industry shall assist in screening and identifying research results for possible industrial applications.

(6) The Committee will from time to time, arrange to have seminars, short courses, visits and practical demonstrations held to foster interest in the results of research as a means of achieving economic progress.

(7) To advise the Secretary of Commerce upon any matter the Secretary might refer to it. (1973, c. 1262, s. 77; 1977, c. 198, ss. 2, 26.)

Editor's Note. — The above section was formerly § 143B-331. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Department of Commerce" for "Department of Natural and Economic Resources" in the first sentence and "Secretary of Commerce" for "Secretary of Natural and Economic Resources" in subdivision (7).

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-441. Science and Technology Committee — members; selection; removal; chairman; compensation; quorum; services. — The Science and Technology Committee shall consist of 15 members appointed by the Governor as follows: Two members shall be from the University of North Carolina at Chapel Hill; two members shall be from North Carolina State University at Raleigh; two members shall be from Duke University; three members shall be from the membership of the General Assembly; three members shall be from industry within the State; one member shall be appointed upon nomination of the Executive Committee of the Board of the Research Triangle Institute; and two members shall be appointed by the Governor at large. The members appointed from the University of North Carolina at Chapel Hill and from North Carolina State University at Raleigh shall be nominated by the President of the University of North Carolina System. The members appointed from Duke University shall be nominated by the President of Duke University. The initial members of the Science and Technology Committee appointed by the Governor shall include the members of the Board of Science and Technology who shall serve for a period equal to the remainder of their current terms on the Board of Science and Technology, six of whose appointments expire June 30, 1973, and eight of whose appointments expire June 30, 1975. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Committee created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Committee from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Committee to serve as chairman at his pleasure.

Members of the Committee shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Committee shall constitute a quorum for the transaction of business.

All clerical and other services required by the Committee shall be supplied by the Secretary of Commerce. (1973, c. 1262, s. 78; 1977, c. 198, ss. 2, 26.)

Editor's Note. — The above section was formerly § 143B-332. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Secretary of Commerce" for "Secretary of Natural and Economic Resources" in the last paragraph.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Part 6. North Carolina Science and Technology Research Center.

§ 143B-442. Creation of Center. — There is hereby created the "North Carolina Science and Technology Research Center" at the Research Triangle. (1963, c. 846, s. 1; 1967, c. 69; 1977, c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143-374. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

§ 143B-443. Administration by Science and Technology Committee. — The activities of the North Carolina Science and Technology Research Center will be administered by the Science and Technology Committee. (1963, c. 846, s. 2; 1967, c. 69; 1977, c. 198, ss. 3, 4, 26.)

Editor's Note. — The above section was formerly § 143-375. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Science and Technology Committee" for "Board of Science and Technology" in the catchline and for "North Carolina Board of Science and Technology" at the end of the section.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-444. Acceptance of funds. — The North Carolina Science and Technology Research Center is authorized and empowered to accept funds from private sources and from governmental and institutional agencies to be used for construction, operation and maintenance of the Center. (1963, c. 846, s. 4; 1967, c. 69; 1977, c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143-376. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

§ 143B-445. Applicability of Executive Budget Act. — The North Carolina Science and Technology Research Center is subject to the provisions of Article 1, Chapter 143, of the General Statutes of North Carolina. (1963, c. 846, s. 5; 1967, c. 69; 1977, c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143-377. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

Part 7. North Carolina National Park, Parkway and Forests Development Council.

§ 143B-446. North Carolina National Park, Parkway and Forests Development Council — creation; powers and duties. — There is hereby created the North Carolina National Park, Parkway and Forests Development Council of the Department of Commerce. The North Carolina National Park, Parkway and Forests Development Council shall have the following functions and duties:

The Council shall endeavor to promote the development of that part of the Smoky Mountains National Park lying in North Carolina, the completion and development of the Blue Ridge Parkway in North Carolina, the development of the Nantahala and Pisgah national forests, and the development of other recreational areas in that part of North Carolina immediately affected by the Great Smoky Mountains National Park, the Blue Ridge Parkway or the Pisgah or Nantahala national forests. It shall be the duty of the Council to study the development of these areas and to recommend a policy that will promote the development of the entire area generally designated as the mountain section of North Carolina, with particular emphasis upon the development of the scenic and recreational resources of the region, and the encouragement of the location of tourist facilities along lines designed to develop to the fullest these resources in the mountain section. It shall confer with the various departments, agencies, commissioners and officials of the federal government and governments of adjoining states in connection with the development of the federal areas and projects named in this section. It shall also advise and confer with the various officials, agencies or departments of the State of North Carolina that may be directly or indirectly concerned in the development of the resources of these areas. It shall also advise and confer with the various interested individuals, organizations or agencies that are interested in developing this area and shall use its facilities and efforts in formulating, developing and carrying out overall programs for the development of the area as a whole. It shall study the need for additional entrances to the Great Smoky Mountains National Park, together with the need for additional highway approaches and connections, and its findings in this connection shall be filed as recommendations with the National Park Service of the federal government, and the North Carolina Department of Transportation through the Department of Commerce. The Council shall provide information to the Department of Commerce to be included in the Department's annual report. It shall also file any suggestions or recommendations as it deems proper with the Department of Commerce in respect to such matters as might be of interest to or affect any department of State government. It shall advise the Secretary of the Department upon any matter the Secretary may refer to it. (1973, c. 1262, s. 66; 1977, c. 198, ss. 5, 26.)

Editor's Note. — The above section was formerly § 143B-322. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Department of Commerce" for "Department of Natural and Economic Resources" in four places.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-447. North Carolina National Park, Parkway and Forests Development Council — members; selection; officers; removal; compensation; quorum; services. — The North Carolina National Park, Parkway and Forests Development Council of the Department of Commerce shall consist of seven members appointed by the Governor. The composition of the Council shall be as follows: one member shall be a resident of Buncombe County, one member a resident of Haywood County, one member a resident of Jackson County, one member a resident of Swain County, three members residents of counties adjacent to the Blue Ridge Parkway, the Great Smoky Mountains National Park or the Pisgah or Nantahala national forests. The initial members of the Council shall be the appointed members of the National Park, Parkway and Forests Development Commission who shall serve for a period equal to the remainder of their current terms on the National Park, Parkway and Forests Development Commission. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be for terms of four years, or until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

The current officers of the North Carolina National Park, Parkway and Forests Development Commission shall continue to serve in that capacity for the remainder of their current terms. Thereafter, the Council shall elect a chairman, a vice-chairman and a secretary. The chairman and the vice-chairman shall all be members of the Council, but the secretary need not be a member of the Council. These officers shall perform the duties usually pertaining to such offices and when elected shall serve for a period of one year, but may be reelected. In case of vacancies by resignation or death, the office shall be filled by the Council for the unexpired term of said officer.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 and G.S. 143B-15 of the Executive Organization Act of 1973.

Five members of the Council shall constitute a quorum for the transaction of business. (1973, c. 1262, s. 67; 1977, c. 198, ss. 5, 26.)

Editor's Note. — The above section was formerly § 143B-323. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. The 1977 act also amended this section by substituting "Department of Commerce" for "Department of Natural and Economic Resources" near the beginning of the first sentence of the first paragraph.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-447.1. North Carolina National Park, Parkway and Forests Development Council — meetings. — The North Carolina National Park, Parkway and Forests Development Council shall meet monthly and may hold special meetings at any time and place within the State at the call of the chairman or upon written request of at least a majority of the members. (1973, c. 1262, s. 68; 1977, c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143B-324. It has been recodified in this Article pursuant to Session Laws 1977, c. 198, s. 26. The 1977 act expressly recodified §§ 143B-322 and 143B-323, but did not mention § 143B-324.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Part 8. Energy Division.

§ 143B-448. Energy Division. — There is hereby created in the Department of Commerce a division to be known as the Energy Division. (1977, c. 23, s. 4; c. 198, s. 26.)

Editor's Note. — The above section was enacted as § 143A-180.1 by Session Laws 1977, c. 23, s. 4. It was recodified in this Article by Session Laws 1977, c. 198, s. 26.

Session Laws 1977, c. 23, s. 6, provides: "All records, personnel, property, and unexpended balances of appropriations of the Energy Division of the Department of Military and Veterans Affairs are hereby transferred to the Energy Division of the Department of Commerce."

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-449. Organization. — The Division shall be organized and shall have such powers, duties and functions as prescribed by the Secretary of Commerce. (1977, c. 23, s. 4; c. 198, s. 26.)

Editor's Note. — The above section was enacted as § 143A-180.2 by Session Laws 1977, c. 23, s. 4. It was recodifed in this Article by Session Laws 1977, c. 198, s. 26.

Session Laws 1977, c. 23, s. 6, provides: "All records, personnel, property, and unexpended balances of appropriations of the Energy Division of the Department of Military and Veterans Affairs are hereby transferred to the Energy Division of the Department of Commerce."

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-450. Reporting of stocks of coal and petroleum fuels. — The Energy Division of the Department of Commerce may, with the prior express approval of the Energy Policy Council and the Governor, require that all coal and petroleum suppliers in North Carolina supplying coal, motor gasoline, middle distillates, residual oils and propane for resale within the State file with the Energy Division, on forms prepared by the Energy Division, accurate reports as to the stocks of coal and petroleum products and storage capacities maintained by said supplier, including said supplier's current inventory and stock of said coal, motor gasoline, middle distillates, residual oils and propane, the expected time such supplies will last under ordinary distribution demand and the schedule for receiving additional or replacement stocks. Such reports and the information contained therein shall be proprietary information available only to regular employees of the Energy Division, except that aggregate tables or schedules consolidating information from said reports may be released if they do not reveal individual report data for any named supplier. It is further the intent of this section that no information shall be required from coal and petroleum suppliers, that is, at the time such reports are requested, already on file with any agency, commission, or department of State government.

It is the intent of this section that such reports be filed only at such times as the Energy Policy Council and the Governor determine that an energy crisis as defined in G.S. 113B-20 exists or may be imminent.

If any petroleum or coal supplier fails to file the accurate reports as may be required by this section for more than 10 days after the date on which any such report is due, the Secretary of Commerce is authorized and empowered to petition the district court, Division of the General Court of Justice in the county in which the principal office or place of business of said supplier is located for a mandatory injunction compelling said supplier to file said report. (1977, c. 792, s. 8.)

Editor's Note. — Session Laws 1977, c. 792, s. 10, contains a severability clause.

Part 9. Navigation and Pilotage Commissions.

§ 143B-451. Navigation and pilotage commissions. — The Board of Commissioners of Navigation and Pilotage for the Cape Fear River as provided for by G.S. 76-1, and the Board of Commissioners of Navigation and Pilotage for Old Topsail Inlet and Beaufort Bar as provided for by G.S. 76-59 are hereby transferred to the Department of Commerce. All powers, duties and authority of the Board of Commissioners of Navigation and Pilotage for the Cape Fear River and Bar and the Board of Commissioners of Navigation and Pilotage for Old Topsail Inlet and Beaufort Bar, as provided for in Chapter 76 of the General Statutes, shall continue to vest in the boards, as now provided by statute, independently of the direction, supervision, and control of the Secretary of Commerce. The commissions shall report their activity to the Governor through the Secretary of Commerce. The appointment to the boards shall continue to be made in the manner as provided by Chapter 76 of the General Statutes. (1975, c. 716, s. 1; 1977, c. 65, s. 4; c. 198, s. 26.)

Editor's Note. — The above section was formerly § 143B-354. It was recodified in this Article by Session Laws 1977, c. 198, s. 26. Session Laws 1977, c. 65, s. 4, amended this section by substituting "Department of Commerce" for "Department of Transportation" in one place and "Secretary of Commerce" for "Secretary of Transportation" in two places.

Session Laws 1977, c. 198, s. 6, as amended by Session Laws 1977, c. 802, s. 50.46, provides that the navigation and pilot commissions be transferred by a type I transfer, as defined by § 143A-6.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Part 10. North Carolina State Ports Authority.

§ 143B-452. Creation of Authority — membership; appointment, terms and vacancies; officers; meetings and quorum; compensation. — The North Carolina State Ports Authority is hereby created. It shall be governed by a board composed of nine members and hereby designated as the authority. Members of the General Assembly shall be eligible for appointment to the membership on the Authority. The General Assembly suggests and recommends that no person be appointed to the Authority who is domiciled in the district of the North Carolina House of Representatives or the North Carolina Senate in which a State port is located. The Governor shall appoint seven members to the Authority, the Lieutenant Governor shall appoint one member and the Speaker of the House of Representatives shall appoint one member.

The initial appointments by the Governor shall be made on or after March 8, 1977, two terms to expire July 1, 1979; two terms to expire July 1, 1981; and three terms to expire July 1, 1983. Thereafter, at the expiration of each stipulated term of office all appointments made by the Governor shall be for a term of six years. The members of the Authority appointed by the Governor shall be selected from the state-at-large and insofar as practicable shall represent each section of the State in all of the business, agriculture, and industrial interests of the State. Any vacancy occurring in the membership of the Authority appointed by the Governor shall be filled by the Governor for the unexpired term. The Governor shall have the authority to remove any member appointed by the Governor.

The Speaker of the House of Representatives shall appoint one member to the board from the current membership of the North Carolina House of Representatives on or after March 8, 1977, for a term of office to expire on July 1, 1979, and an appointment shall be made by the Speaker of the House for a term of office each two years thereafter. Any vacancy on the Authority by reason of the resignation, or for any other reason, of the member appointed by the Speaker, shall be filled by the Speaker.

The Lieutenant Governor shall appoint one member to the board from the current membership of the North Carolina Senate on or after March 8, 1977, for a term of office to expire on July 1, 1979, and an appointment shall be made by the Lieutenant Governor for a term of office each two years thereafter. Any vacancy on the board by reason of the resignation, or for any other reason, of the board member appointed by the Lieutenant Governor shall be filled by the Lieutenant Governor.

The Governor shall appoint from the members of the Authority the chairman and vice-chairman of the Authority. The Secretary of Commerce or his designee shall serve as secretary of the Authority. The members of the Authority shall appoint a treasurer of the Authority.

The Authority shall meet once in each 60 days at such regular meeting time as the authority by rule may provide and at any place within the State as the Authority may provide, and shall also meet upon the call of its chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. The members of the Authority shall not be entitled to compensation for their services, but they shall receive per diem and necessary travel and subsistence expense in accordance with G.S. 138-5. (1945, c. 1097, s. 1; 1949, c. 892, s. 1; 1953, c. 191, s. 1; 1959, c. 523, s. 1; 1961, c. 242; 1975, c. 716, s. 2; 1977, c. 65, s. 1; c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-216. It was recodified in this Article by Session Laws 1977, c. 198, s. 9. It was rewritten by amendments in Session Laws 1975, c. 716, s. 2, and Session Laws 1977, c. 65, s. I.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

For act transferring to the State Ports Authority all property and functions of the Morehead City Port Commission and providing for cancellation of outstanding bonds of said Commission, see Session Laws 1951, c. 776, as amended by Session Laws 1975, c. 638.

State Government Reorganization. — The State Ports Authority was transferred to the Department of Transportation and Highway Safety [now Department of Transportation] by former § 143A-107, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1975, c. 716, s. 5. For present provisions as to the Department of Transportation, see § 143B-345 et seq.

State Ports Authority Is Carrier under Federal Railway Labor Act. — See International Longshoremen's Ass'n v. North Carolina Ports Auth., 463 F.2d 1 (4th Cir.), cert. denied, 409 U.S. 982, 93 S. Ct. 318, 34 L. Ed. 245 (1972).

Applied in Wood-Hopkins Contracting Co. v. North Carolina State Ports Auth., 284 N.C. 732, 202 S.E.2d 473 (1974).

§ 143B-453. Purposes of Authority. — Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and operation at such seaports or harbors of watercraft, terminal railroads and facilities and highways and bridges thereon or essential for the proper operation thereof. Said Authority is created as an instrumentality of the State of North Carolina for the accomplishment of the following general purposes:

(1) To develop and improve the harbors or seaports at Wilmington, Morehead City and Southport, North Carolina, and such other places, including inland ports and facilities, as may be deemed feasible for a more expeditious and efficient handling of waterborne commerce from and to any place or places in the State of North Carolina and other states and foreign countries.

(2) To acquire, construct, equip, maintain, develop and improve the port facilities at said ports and to improve such portions of the waterways thereat as are within the jurisdiction of the federal government.

(3) To foster and stimulate the shipment of freight and commerce through said ports, whether originating within or without the State of North Carolina, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same.

(4) To cooperate with the United States of America and any agency, department, corporation or instrumentality thereof in the maintenance, development, improvement and use of said harbors and seaports in connection with and in furtherance of the war operations and needs of the United States.

(5) To accept funds from any of said counties or cities wherein said ports are located and to use the same in such manner, within the purposes of said Authority, as shall be stipulated by the said county or city, and to act as agent or instrumentality, of any of said counties or cities in any matter coming within the general purposes of said Authority.

(6) To act as agent for the United States of America or any agency, department, corporation or instrumentality thereof, in any matter coming within the purposes or powers of the Authority.

(7) And in general to do and perform any act or function which may tend or be useful toward the development and improvement of harbors, seaports and inland ports of the State of North Carolina, and to increase the movement of waterborne commerce, foreign and domestic, to, through, and from such harbors and ports.

The enumeration of the above purposes shall not limit or circumscribe the broad objective of developing to the utmost the port possibilities of the State of North Carolina. (1945, c. 1097, s. 2; 1953, c. 191, ss. 3, 4; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-217. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Authority Was Created for Public Purpose. — Beyond question, the Authority was created and empowered to act to accomplish a public purpose. North Carolina State Ports Auth. v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955).

Authority an Instrumentality and Agency of State. — The Authority created by this Article is an instrumentality and agency of the State, created and empowered to accomplish a public purpose. Nat Harrison Associates v. North Carolina State Ports Auth., 280 N.C. 251, 185 S.E.2d 793 (1972).

§ 143B-454. Powers of Authority. — In order to enable it to carry out the purposes of this Part, the said Authority shall:

(1) Have the powers of a body corporate, including the power to sue and be sued, to make contracts, and to adopt and use a common seal and to alter the same as may be deemed expedient;

(2) Have the authority to make all necessary contracts and arrangements with other port authorities of this and other states for the interchange of business, and for such other purposes as will facilitate and increase the business of the North Carolina State Ports Authority;

(3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage, otherwise encumber, and dispose of such property, real or personal, as said Authority may deem proper to carry out the purposes and provisions of this Part, all or any of them;

(4) Be authorized and empowered to acquire, construct, maintain, equip and operate any wharves, docks, piers, quays, elevators, compresses, refrigeration storage plants, warehouses and other structures, and any and all facilities needful for the convenient use of the same in the aid of commerce, including the dredging of approaches thereto, and the construction of belt-line roads and highways and bridges and causeways thereon, and other bridges and causeways necessary or useful in connection therewith, and shipyards, shipping facilities, and transportation facilities incident thereto and useful or convenient for the use thereof, including terminal railroads;

(5) The Secretary of Commerce with the approval of the Authority shall appoint such management personnel as he deems necessary to serve at his pleasure. The salaries of these personnel shall be fixed by the Governor with the approval of the Advisory Budget Commission. The Secretary of Commerce or his designee shall appoint, employ, dismiss and, within the limits of available funding, fix the compensation of such other employees as he deems necessary to carry out the purposes of this Part. There shall be an executive committee consisting of the chairman of the Authority and two other members elected annually by the Authority. The executive committee shall be vested with authority to do all acts which are authorized by the bylaws of the Authority. Members of the executive committee shall serve until their successors are elected.

(6) Establish an office for the transaction of its business at such place or places as, in the opinion of the Authority, shall be advisable or necessary in carrying out the purposes of this Part;

(7) Be authorized and empowered to create and operate such agencies and departments as said board may deem necessary or useful for the furtherance of any of the purposes of this Part;

(8) Be authorized and empowered to pay all necessary costs and expenses involved in and incident to the formation and organization of said Authority, and incident to the administration and operation thereof, and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Part;

(9) Be authorized and empowered to apply for and accept loans and grants of money from any federal agency or the State of North Carolina or any political subdivision thereof or from any public or private sources available for any and all of the purposes authorized in this Article, and to expend the same in accordance with the directions and requirements attached thereto, or imposed thereon by any such federal agency, the State of North Carolina, or any political subdivision thereof, or any public or private lender or donor, and to give such evidences of indebtedness as shall be required, provided, however, that no indebtedness of any kind incurred or created by the Authority shall constitute an indebtedness of the State of North Carolina, or any political subdivisions thereof, and no such indebtedness shall involve or be secured by the faith, credit or taxing power of the State of North Carolina, or any political subdivision thereof: Provided, however, at no

time may the total outstanding indebtedness of the Authority, excluding bond indebtedness exceed a total of five hundred thousand dollars ($500,000) without approval of the Advisory Budget Commission;

(10) Be authorized and empowered to act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any matter coming within the purposes or powers of the Authority;

(11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its business;

(12) Be authorized and empowered to do any and all other acts and things in this Part authorized or required to be done, whether or not included in the general powers in this section mentioned; and

(13) Be authorized and empowered to do any and all things necessary to accomplish the purposes of this Part: Provided, that said Authority shall not engage in shipbuilding.

The property of the Authority shall not be subject to any taxes or assessments thereon. (1945, c. 1097, s. 3; 1949, c. 892, s. 2; 1953, c. 191, s. 5; 1959, c. 523, ss. 3-5; 1975, c. 716, s. 2; 1977, c. 65, s. 2; c. 198, ss. 7, 9; c. 802, s. 50.45.)

Editor's Note. — The above section was formerly § 143-218. It was recodified in this Article by Session Laws 1977, c. 198, s. 9. Session Laws 1977, c. 198, s. 7, amended this section by substituting "this Part" for "this Article" throughout the section. Session Laws 1977, c. 65, s. 2, amended this section by rewriting subdivision (5), and Session Laws 1977, c. 802, s. 50.45, amended subdivision (5) as so rewritten by rewriting the first five sentences of the subdivision as the first three sentences of the subdivision as set out above.

The 1975 amendment added the proviso at the end of subdivision (9).

Session Laws 1977, c. 198, s. 31, and c. 802, s. 53, contain severability clauses.

Ports Authority Has Power to Lease Property to Private Investor. — See opinion of Attorney General to Mr. Woodrow Price, Chairman, State Ports Authority, 41 N.C.A.G. 78 (1970).

Lease of Facility to Private Corporation. — A lease by the Ports Authority of a grain handling facility to a private corporation, under the terms of which the corporation would pay during a five-year term all costs of operation of facility and rentals sufficient to pay in full revenue bonds issued by the Authority, was within the power of the Authority and did not constitute a loan of the credit of the State or the agency. North Carolina State Ports Auth. v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955).

Management Functions Transferred to Secretary of Transportation by Executive Organization Act of 1971. — See opinion of Attorney General to Mr. H.Y. Kinard, Department of Transportation, 44 N.C.A.G. 166 (1974).

§ 143B-455. Approval of acquisition and disposition of real property. — Any transactions relating to the acquisition or disposition of real property or any estate or interest in real property, by the North Carolina State Ports Authority, shall be subject to prior review by the Governor and Council of State, and shall become effective only after the same has been approved by the Governor and Council of State. Upon the acquisition of real property or other estate therein, by the North Carolina State Ports Authority, the fee title or other estate shall vest in and the instrument of conveyance shall name the "North Carolina State Ports Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest or estate therein, the instrument of conveyance or transfer shall be executed by the North Carolina State Ports Authority. The approval of any transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such classes of lease, rental, easement, or right-of-way transactions as he deems advisable, and he may likewise delegate the review and approval of the severance of buildings and timber from the land. (1959, c. 523, s. 6; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-218.1. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

The North Carolina State Ports Authority is not freed from the provisions of this section merely because the Authority has the right under § 143-220 (now § 143B-457) to select the particular procedure it will follow in exercising its power of eminent domain. North Carolina State Ports Auth. v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

Quoted in State Hwy. Comm'n v. Matthis, 2 N.C. App. 233, 163 S.E.2d 35 (1968).

§ 143B-456. Issuance of bonds. — (a) As a means of raising the funds needed from time to time in the acquisition, construction, equipment, maintenance and operation of any facility, building, structure, terminal railroad or any other matter or thing which the Authority is herein authorized to acquire, construct, equip, maintain, or operate, all or any of them, the said Authority is hereby authorized, with the approval of the Advisory Budget Commission, at one time or from time to time to issue negotiable revenue bonds of the Authority. The principal and interest of such revenue bonds shall be payable solely from the revenue to be derived from the operation of all or any part of its properties and facilities.

(b) A pledge of the net revenues derived from the operation of said properties and facilities, all or any of them, shall be made to secure the payment of said bonds as and when they mature.

(c) Revenue bonds issued under the provisions of this Article shall not be deemed to constitute a debt of the State of North Carolina or a pledge of the faith and credit of the State. The issuance of such revenue bonds shall not directly or indirectly or contingently obligate the State to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

(d) Such bonds and the income thereof shall be exempt from all taxation within the State. (1945, c. 1097, s. 4; 1975, c. 716, s. 2; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-219. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

The 1975 amendment inserted "with the approval of the Advisory Budget Commission" near the end of the first sentence of subsection (a).

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Effect of Former Section 13 of State Ports Bond Act of 1949. — This section remained in full force and effect except to the extent, if any, it was in irreconcilable conflict with former § 13 of the State Ports Bond Act of 1949, which was repealed by Session Laws 1971, c. 574. North Carolina State Ports Auth. v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955).

Former § 13 of the State Ports Bond Act did not prohibit or suspend the Authority's right to raise $60,000 of the cost of construction of a particular new facility by the issuance and sale of revenue bonds and to pledge the revenues to be derived from the operation of the particular facility to secure the payment of the bonds. North Carolina State Ports Auth. v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955).

§ 143B-457. Power of eminent domain. — For the acquiring of rights-of-way and property necessary for the construction of terminal railroads and structures, including railroad crossings, airports, seaplane bases, naval bases, wharves, piers, ships, docks, quays, elevators, compresses, refrigerator storage plants, warehouses and other riparian and littoral terminals and structures and approaches thereto and transportation facilities needful for the convenient use of same, and belt line roads and highways and causeways and bridges and other bridges and causeways, the Authority shall have the right and power to acquire the same by purchase, by negotiation, or by condemnation, and should it elect to exercise the right of eminent domain, condemnation proceedings shall be maintained by and in the name of the Authority, and it may proceed in the manner provided by the general laws of the State of North Carolina for the procedure by any county, municipality or authority organized under the laws of this State, or by the Board of Transportation, or by railroad corporations, or in any other manner provided by law, as the Authority may, in its discretion, elect. The power of eminent domain shall not apply to property of persons, State agency or corporations already devoted to public use. (1945, c. 1097, s. 5; 1973, c. 507, s. 5; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-220. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Strict Construction. — The exercise of the power of eminent domain is in derogation of common right, and all laws conferring such power must be strictly construed. North Carolina State Ports Auth. v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

The right to authorize the exercise of the power of eminent domain and the mode of exercise thereof is wholly legislative, limited only by constitutional provisions which require reasonable notice and opportunity to be heard and payment of just compensation for taking of private property for public uses. North Carolina State Ports Auth. v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

The North Carolina State Ports Authority is not freed from the provisions of § 143-218.1 (now § 143B-455) merely because the Authority has the right under this section to select the particular procedure it will follow in exercising its power of eminent domain. North Carolina State Ports Auth. v. Southern Felt Corp., 1 N.C. App. 231, 161 S.E.2d 47 (1968).

Statutes Not to Be Construed to Hamper Authority in Accomplishment of Its Purpose. — Recognizing the dominant intent of the General Assembly to provide maximum development and use of our seaports, no construction should be placed on statutes relating to the Authority, unless plainly required by the express terms thereof, that would tend to hamper the Authority in its efforts to accomplish the very purposes of its existence. North Carolina State Ports Auth. v. First-Citizens Bank & Trust Co., 242 N.C. 416, 88 S.E.2d 109 (1955).

§ 143B-458. Exchange of property; removal of buildings, etc. — The Authority may exchange any property or properties acquired under the authority of this Chapter for other property, or properties usable in carrying out the powers hereby conferred, and also may remove from lands needed for its purposes and reconstruct on other locations, buildings, terminals, railroads, or other structures, upon the payment of just compensation, if in its judgment, it is necessary or expedient so to do in order to carry out any of its plans for port development, under the authorization of this Article. (1945, c. 1097, s. 6; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-221. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-459. Dealing with federal agencies. — The Authority board is authorized to assign, transfer, lease, convey, grant or donate to the United States of America, or to the appropriate agency or department thereof, any or all of the property of the Authority, for the use by such grantee for any purpose included within the general purposes of this Article, as stated in G.S. 143-217, such assignment, transfer, lease, conveyance, grant or donation to be upon such terms as the Authority board may deem advisable. In the event the United States of America should decide to undertake the acquisition, construction, equipment, maintenance or operation of the airports, seaplane bases, naval bases, wharves, piers, ships, refrigerator storage plants, warehouses, elevators, compresses, docks, shipyards, shipping and transportation facilities before referred to, including terminal railroads, roads, highways, causeways, or bridges and should itself decide to acquire the lands and properties necessarily needed in connection therewith by condemnation or otherwise, the Authority board is further authorized to transfer and pay over to the United States of America or to the appropriate agency or department thereof, such of the moneys belonging to the Authority board as may be found needed or reasonably required by said United States of America to meet and pay the amount of judgments or condemnation, including costs, if any to be taxed thereon, as may from time to time be rendered against the United States of America, or its appropriate agency, or as may be reasonably necessary to permit and allow said United States of America, or its appropriate agency, to acquire and become possessed of such lands and properties as are reasonably required for the construction and use of said facilities before referred to. (1945, c. 1097, s. 7; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-222. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-460. Terminal railroads. — The Authority shall have the power and authority to acquire, own, lease, locate, install, construct, equip, hold, maintain, control and operate at harbors and seaports a line of terminal railroads with necessary sidings, turnouts, spurs, branches, switches, yard tracks, bridges, trestles, and causeways and in connection therewith or appurtenant thereto shall have the further right to lease, install, construct, acquire, own, maintain, control and use any and every kind or character of motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, and merchandise over, along or upon the track of such railroad or other conveyances. And the Authority shall have the right and authority to make agreements as to scale of wages, seniority, and working conditions with locomotive engineers, locomotive firemen, switchmen and switch engine foremen and hostlers engaged in the operation of the terminal railroads provided for in this section, and the service and equipment pertinent thereto. And should the said Department exercise the authority herein given, then in such event it shall be the duty of the said Department to make such agreements with said employees hereinabove specified, in accordance with the act of Congress known as the Railroad Labor Act (U.S.C. Title 45, sections 151-163) as amended or as hereafter amended to the end that the same agreements as to seniority and working conditions will obtain as to said employees and the standard rate of pay be provided, as are in force relative to like employees of interstate railroads operating in the same territory with terminal railroads authorized hereby. The Authority shall have the right and authority with its terminal railroads to connect with or cross any other railroad upon payment of just compensation and to receive, deliver to and transport the freight, passengers, and cars of common carrier railroads as though it were an ordinary common carrier. (1945, c. 1097, s. 8; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-223. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

Operation of Interstate Railroad Subjects Authority to Suit in Federal Court. — The North Carolina State Ports Authority, by knowingly entering into the operation of an interstate railroad, has subjected itself to suit in federal court by private parties to enforce rights created by Congress in the exercise of its power over interstate commerce. International Longshoremen's Ass'n v. North Carolina State Ports Auth., 370 F. Supp. 33 (E.D.N.C. 1974), aff'd, 511 F.2d 1007 (4th Cir. 1975).

Collective Bargaining with Railroad Employees. — While this section vests in the Ports Authority the discretionary right to bargain collectively with certain of the railroad employees, it expressly provides that "such agreements with said employees shall be made in accordance with the act of Congress known as the Railroad Labor Act (U.S.C. Title 45, sections 151-163) . . . ." Thus, it is manifest that the North Carolina General Assembly was aware that it was entering into an area of federal regulation governed by the R.L.A. International Longshoremen's Ass'n v. North Carolina State Ports Auth., 370 F. Supp. 33 (E.D.N.C. 1974), aff'd, 511 F.2d 1007 (4th Cir. 1975).

§ 143B-461. Jurisdiction of the Authority; application of Chapter 20; appointment and authority of special police. — (a) The jurisdiction of the Authority in any of said harbors or seaports within the State shall extend to all properties owned by or under control of the Authority and shall also extend over the waters and shores of such harbors or seaports and over that part of all tributary streams flowing into such harbors or seaports in which the tide ebbs and flows, and shall extend to the outer edge of the outer bar at such harbors or seaports.

(b) All the provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of motor vehicles thereon are hereby made applicable to the streets, alleys and driveways on the properties owned by or under the control of the North Carolina State Ports Authority. Any person violating any of the provisions of said Chapter in or on such streets, alleys or driveways shall, upon conviction thereof, be punished as therein prescribed. Nothing herein contained shall be construed as in any way interfering with the ownership and control of such streets, alleys and driveways on the properties of said Authority as is now vested by law in the said Authority.

(c) The North Carolina State Ports Authority is hereby authorized to make such reasonable rules, regulations, and adopt such additional ordinances with respect to the use of the streets, alleys, driveways and to the establishment of parking areas on the properties of the Authority and relating to the safety and welfare of persons using the property of the Authority. All rules, regulations and ordinances adopted pursuant to the authority of this subsection shall be recorded in the proceedings of the Authority and printed and copy of such rules, regulations and ordinances shall be filed in the office of the Attorney General of North Carolina and the Authority shall cause to be posted, at appropriate places on the properties of the Authority, notice to the public of applicable rules, regulations and ordinances as may be adopted under the authority of this subsection. Any person violating any such rules, regulations or ordinances shall, upon conviction thereof, be guilty of a misdemeanor and shall be punished by a fine of not exceeding fifty dollars ($50.00) or imprisonment not to exceed 30 days.

(d) The chairman of the Authority is authorized to appoint such number of employees of the Authority as he may think proper as special policemen, who, when so appointed, shall have all the powers of policemen of incorporated towns. Such policemen shall have the power of arrest of persons committing violations of State law or any reasonable rules, regulations and ordinances lawfully adopted by the Authority as herein authorized. Employees appointed as such special policemen shall take the general oath of office prescribed by G.S. 11-11. (1945, c. 1097, s. 9; 1959, c. 523, s. 7; 1965, c. 1074; 1975, 2nd Sess., c. 983, s. 83; 1977, c. 198, ss. 8, 9.)

Editor's Note. — The above section was formerly § 143-224. It was recodified in this Article by Session Laws 1977, c. 198, s. 9. The 1977 act also amended this section by substituting "chairman" for "Executive Director" near the beginning of subsection (d).

The 1975, 2nd Sess., amendment substituted "Attorney General" for "Secretary of State" near the middle of the second sentence of subsection (c).

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-462. Treasurer of the Authority. — The Authority shall select its own treasurer. The Authority shall require a surety bond of such appointee in such amount as the Authority may fix, and the premium or premiums thereon shall be paid by said Authority as a necessary expense of said Authority. (1945, c. 1097, s. 10; 1959, c. 523, s. 8; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-225. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-463. Deposit and disbursement of funds. — All Authority funds shall be deposited in a bank or banks to be designated by the Authority. Funds of the Authority shall be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the chairman, the acting chairman or the executive director. No warrants shall be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this Article and only when the account or expenditure for which the same is to be given in payment has been audited and approved by the Authority or its executive director. Any and all revenues and earnings received by the Authority from its operations shall be handled as directed in section 13, Chapter 820 of the Session Laws of 1949. (1945, c. 1097, s. 11; 1951, c. 1088, s. 1; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-226. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-464. Annual audit; copies to be furnished. — At least once in each year the State Auditor shall cause to be made a detailed audit of all moneys received and disbursed by the Authority during the preceding year. Such audit shall show the several sources from which funds were received and the balance on hand at the beginning and end of the preceding year and shall show the complete financial condition of the Authority. A copy of the said audit shall be furnished to each member of the governing body of the said Authority and to the officers thereof and to the Governor, the Department of Administration and the Attorney General. (1945, c. 1097, s. 12; 1951, c. 1088, s. 2; 1957, c. 269, s. 1; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-227. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" near the end of the section. See § 143-344(a).

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-465. Purchase of supplies, material and equipment. — All the provisions of Article 3 of Chapter 143 of the General Statutes relating to the purchase of supplies, material and equipment by the State government are hereby made applicable to the North Carolina State Ports Authority. (1953, c. 191, s. 6; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-227.1. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-466. Liberal construction of Article. — It is intended that the provisions of this Article shall be liberally construed to accomplish the purposes provided for, or intended to be provided for, herein, and where strict construction would result in the defeat of the accomplishment of any of the acts authorized herein, and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen. (1945, c. 1097, s. 13; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-228. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§ 143B-467. Warehouses, wharves, etc., on property abutting navigable waters. — The powers, authority and jurisdiction granted to the North Carolina State Ports Authority under this Article and Chapter shall not be construed so as to prevent other persons, firms and corporations, including municipalities, from owning, constructing, leasing, managing and operating warehouses, structures and other improvements on property owned, leased or under the control of such other persons, firms and corporations abutting upon and adjacent to navigable waters and streams in this State, nor to prevent such other persons, firms and corporations from constructing, owning, leasing and operating in connection therewith wharves, docks and piers, nor to prevent such other persons, firms and corporations from encumbering, leasing, selling, conveying or otherwise dealing with and disposing of such properties, facilities, lands and improvements after such construction. (1955, c. 727; 1977, c. 198, s. 9.)

Editor's Note. — The above section was formerly § 143-228.1. It was recodified in this Article by Session Laws 1977, c. 198, s. 9.

Session Laws 1977, c. 198, s. 31, contains a severability clause.

§§ 143B-468 to 143B-472: Reserved for future codification purposes.

ARTICLE 11.

Department of Crime Control and Public Safety.

Part 1. General Provisions.

§ 143B-473. Department of Crime Control and Public Safety — creation. — There is hereby created and constituted a department to be known as the "Department of Crime Control and Public Safety," with the organization, powers, and duties defined in Article 1 of this Chapter, except as modified in this Article. (1977, c. 70, s. 1.)

Editor's Note. — For transition provisions applicable to the organization of the Department of Crime Control and Public Safety, see Session Laws 1977, c. 70, ss. 35, 36.

Session Laws 1977, c. 70, s. 34, contains a severability clause.

§ 143B-474. Department of Crime Control and Public Safety — duties. — It shall be the duty of the Department of Crime Control and Public Safety to provide assigned law-enforcement and emergency services to protect the public against crime and against natural and man-made disasters; to plan and direct a coordinated effort by the law-enforcement agencies of State government and to insure maximum cooperation between State and local law-enforcement agencies in the fight against crime; to prepare annually a State plan for the State's criminal justice system; to serve as the State's chief coordinating agency to control crime, to insure the safety of the public and to insure an effective and efficient State criminal justice system; to have charge of investigations of criminal matters particularly set forth in this Article and of such other crimes and areas of concern in the criminal justice system as the Governor may direct; to regularly patrol the highways of the State and enforce all laws and regulations respecting travel and the use of vehicles upon the highways of the State and all laws for the protection of the highways of the State; to provide national guard troops trained by the State to federal standards; to insure the preparation, coordination, and currency of military and civil preparedness plans and the effective conduct of emergency operations by all participating agencies to sustain life, and prevent, minimize, or remedy injury to persons and damage to property resulting from disasters caused by enemy attack or other hostile actions or from disasters due to natural or man-made causes; and to develop a plan for a coordinated and integrated electronic communications system for State government and cooperating local agencies, including coordination and integration of existing electronic communications systems. (1977, c. 70, s. 1.)

§ 143B-475. Department of Crime Control and Public Safety — functions. — (a) All functions, powers, duties and obligations heretofore vested in the following subunits of the following departments are hereby transferred to and vested in the Department of Crime Control and Public Safety:

(1) The National Guard, Department of Military and Veterans Affairs;
(2) Civil Preparedness, Department of Military and Veterans Affairs;
(3) State Civil Air Patrol, Department of Military and Veterans Affairs;
(4) State Highway Patrol, Department of Transportation;
(5) State Board of Alcoholic Control Enforcement Division, Department of Commerce;
(6) Governor's Crime Commission, Department of Natural and Economic Resources;
(7) Crime Control Division, Department of Natural and Economic Resources;
(8) Criminal Justice Information System Board, Department of Natural and Economic Resources; and
(9) Criminal Justice Information System Security and Privacy Board, Department of Natural and Economic Resources.

(b) The Department shall perform such other functions as may be assigned by the Governor.

(c) All such functions, powers, duties and obligations heretofore vested in any existing agency in Article 5 of Chapter 143B of the General Statutes are hereby transferred to and vested in the Department of Crime Control and Public Safety, except as otherwise provided by the Executive Organization Act of 1973, as amended. (1977, c. 70, s. 1.)

Cross References. — As to transfer of the Governor's Crime Commission to the Department of Crime Control and Public Safety, see § 143A-244. As to transfer of the Crime Control Division from the Department of Natural and Economic Resources to the Department of Crime Control and Public Safety, see § 143A-245.

Editor's Note. — Sections 143B-246 to 143B-251, which comprise Part 1 of Article 5 of Chapter 143B, referred to in subsection (c), were repealed by Session Laws 1977, c. 70, s. 33. Sections 143B-252, 143B-253, which comprise Part 2 of that Article, were transferred to §§ 143B-399, 143B-400 by Session Laws 1977, c. 70, ss. 24, 25. The same 1977 act enacted this Article.

Because this section relates to past events, no changes have been made in it pursuant to Session Laws 1977, c. 771, s. 4, which substituted

"Natural Resources and Community Development" for "Natural and Economic Resources."

§ 143B-476. Department of Crime Control and Public Safety — head. — (a) The head of the Department of Crime Control and Public Safety is the Secretary of Crime Control and Public Safety, who shall be known as the Secretary. The Secretary shall have such powers and duties as are conferred on him by this Chapter, delegated to him by the Governor, and conferred on him by the Constitution and laws of this State.

(b) The Secretary, through appropriate subunits of the department, shall, at the request of the Governor, provide assistance to State and local law-enforcement agencies, district attorneys, judges, and the Department of Correction, when called upon by them and so directed.

(c) In the event that the Governor, in the exercise of his constitutional and statutory responsibilities, shall deem it necessary to utilize the services of more than one subunit of State government to provide protection to the people from natural or man-made disasters or emergencies, including but not limited to wars, insurrections, riots, civil disturbances, or accidents, the Secretary, under the direction of the Governor, shall serve as the chief coordinating officer for the State between the respective subunits so utilized. (1977, c. 70, s. 1.)

Part 2. Crime Control Division.

§ 143B-477. Crime Control Division of the Department of Crime Control and Public Safety. — (a) There is hereby established, within the Department of Crime Control and Public Safety, the Crime Control Division, which shall be organized and staffed in accordance with applicable laws and regulations and within the limits of authorized appropriations.

(b) The Crime Control Division shall provide clerical and professional services required by the Governor's Crime Commission and shall administer the State Law Enforcement Assistance Program and such additional related programs as may be established by or assigned to the Commission. It shall serve as the single State planning agency for purposes of the Crime Control Act of 1976 (Public Laws 94-503). Administrative responsibilities shall include, but are not limited to, the following:

(1) Compiling data, establishing needs and setting priorities for funding and policy recommendations for the Commission;

(2) Preparing and revising statewide plans for adoption by the Commission which are designed to improve the administration of criminal justice and to reduce crime in North Carolina;

(3) Advising State and local interests of opportunities for securing federal assistance for crime reduction and for improving criminal justice administration and planning within the State of North Carolina;

(4) Stimulating and seeking financial support from federal, State, and local government and private sources for programs and projects which implement adopted criminal justice administration improvement and crime reduction plans;

(5) Assisting State agencies and units of general local government and combinations thereof in the preparation and processing of applications for financial aid to support improved criminal justice administration, planning and crime reduction;

(6) Encouraging and assisting coordination at the federal, State, and local government levels in the preparation and implementation of criminal justice administration improvements and crime reduction plans;

(7) Applying for, receiving, disbursing, and auditing the use of funds received for the program from any public and private agencies and instrumentalities for criminal justice administration, planning, and crime reduction purposes;

(8) Entering into, monitoring, and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;

(9) Providing technical assistance to State and local law-enforcement agencies in developing programs for improvement of the law-enforcement and criminal justice system; and

(10) Taking such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities.

(c) The Crime Control Division shall also provide professional and clerical staff services to the adjunct committees of the Governor's Crime Commission established in G.S. 143B-480. (1977, c. 11, s. 4.)

Editor's Note. — The above section is § 143B-340 as enacted by Session Laws 1977, c. 11, s. 4. It has been recodified in this Article because of the establishment of the Department of Crime Control and Public Safety.

Session Laws 1977, c. 11, s. 7, contains a severability clause.

Part 3. Governor's Crime Commission.

§ 143B-478. Governor's Crime Commission — creation; composition; terms; meetings, etc. — (a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of 29 voting members and six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Human Resources, and the Secretary of the Department of Correction;

b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, and a district attorney;

c. A defense attorney, three sheriffs (one of whom shall be from a "high crime area"), three police executives (one of whom shall be from a "high crime area"), four citizens (two with knowledge of juvenile delinquency and the public school system, one representative of a "private juvenile delinquency program," and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;

d. One member of the North Carolina House of Representatives and one member of the North Carolina State Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Youth Services of the Department of Human Resources, the Administrator for Juvenile Services of the Administrative Office of the Courts, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.

(b) The membership of the Commission shall be selected as follows:

(1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney

General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Human Resources, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Paroles, the Director of the Division of Youth Services and the Administrator for Juvenile Services of the Administrative Office of the Courts. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.

(2) The following members shall be appointed by the Governor: the district attorney, the defense attorney, the three sheriffs, the three police executives, the four citizens, the three county commissioners or county officials, the three mayors or municipal officials.

(3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.

(4) The member of the House of Representatives shall be appointed by the Speaker of the House of Representatives and the member of the Senate shall be appointed by the Lieutenant Governor. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

(5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed pursuant to subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business. (1965, c. 663; 1977, c. 11, s. 1.)

Cross Reference. — As to transfer of the Crime Control Division from the Department of Natural and Economic Resources (now Department of Natural Resources and Community Development) to the Department of Crime Control and Public Safety, see § 143A-245.

Editor's Note. — This section is § 143B-337 as amended by Session Laws 1977, c. 11, s. 1, effective March 1, 1977. It has been recodified in this Article because of the transfer of the Governor's Crime Commission (formerly the Governor's Law and Order Commission) to the Department of Crime Control and Public Safety.

For transition provisions applicable to the transfer, see Session Laws 1977, c. 11, s. 5.

Session Laws 1977, c. 11, s. 5 provides, in part: "Prior to the creation of the Department of Crime Control and Public Safety, the Governor's Crime Commission shall be a part of the Department of Natural and Economic Resources [now Department of Natural Resources and Community Development]; and the professional and clerical responsibilities vested by this act in the Division of Crime Control of the Department of Crime Control and Public Safety shall continue to be vested in the Law and Order Section of the Department of Natural and Economic Resources [now Department of Natural Resources and Community Development]. Until such time as the Department of Crime Control and Public Safety is created, all references in this act to the Department of Crime Control and Public Safety shall be deemed to refer to the Department of Natural and Economic Resources [now Department of Natural Resources and Community Development]."

Session Laws 1977, c. 11, s. 7, contains a severability clause.

§ 143B-479. Governor's Crime Commission — powers and duties. — (a) The Governor's Crime Commission shall have the following powers and duties:

(1) To serve, along with its adjunct committees, as the chief advisory board to the Governor and to the Secretary of the Department of Crime Control and Public Safety on matters pertaining to the criminal justice system.

(2) To develop a comprehensive statewide plan for the improvement of criminal justice throughout the State which is consistent with and serves to foster the following established goals of the criminal justice system:
  a. To reduce crime,
  b. To protect individual rights,
  c. To achieve justice,
  d. To increase efficiency in the criminal justice system,
  e. To promote public safety,
  f. To provide for the administration of a fair and humane system which offers reasonable opportunities for adjudicated offenders to develop progressively responsible behavior, and
  g. To increase professional skills of criminal justice officers.

(3) To assist and participate with the State and local law-enforcement agencies in improving law enforcement and the administration of criminal justice;

(4) To make studies and recommendations for the improvement of law enforcement and the administration of criminal justice;

(5) To encourage public support and respect for the criminal justice system in North Carolina;

(6) To seek ways to continue to make North Carolina a safe and secure State for its citizens;

(7) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;

(8) To set objectives and priorities for the improvement of law enforcement and criminal justice throughout the State;

(9) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary;

(10) To serve as a coordinating committee and forum for discussion of recommendations from its adjunct committees formed pursuant to G.S. 143B-339; and

(11) To serve as the primary channel through which local law-enforcement departments and citizens can lend their advice, and state their needs, to the Department of Crime Control and Public Safety.

(b) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government for grants-in-aid for criminal justice purposes which may be made available for the State by the federal government. The Governor's Crime Commission shall be the single State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the Law Enforcement Assistance Administration of the United States Department of Justice. In respect to such grants, the Commission shall have authority to review, approve and maintain general oversight of the State plan and its implementation, including subgrants and allocations to local units of government.

All decisions and grants heretofore made by the Governor's Law and Order Commission shall remain in full force and effect unless and until repealed or superseded by action of the Governor's Crime Commission established herein. The present Governor's Commission on Law and Order is terminated on February 28, 1977, and its powers, duties, and responsibilities vest in the Governor's Crime Commission effective March 1, 1977. All directives of the Governor's Crime Commission shall be administered by the Director, Crime Control Division of the Department of Crime Control and Public Safety. (1975, c. 663; 1977, c. 11, s. 2.)

Editor's Note. — The above section is § 143B-338 as rewritten by Session Laws 1977, c. 11, s. 2. It has been recodified in this Article because of the transfer of the Governor's Crime Commission (formerly the Governor's Law and Order Commission) to the Department of Crime Control and Public Safety.

Session Laws 1977, c. 11, s. 7, contains a severability clause.

Section 143B-339, referred to in subdivision (10) of subsection (a), was rewritten by Session Laws 1977, c. 11, s. 3, and recodified as § 143B-480.

§ 143B-480. Adjunct committees of the Governor's Crime Commission — creation; purpose; powers and duties. — (a) There are hereby created by way of extension and not limitation, the following adjunct committees of the Governor's Crime Commission: the Crime Prevention and Public Information Committee, the Judicial Planning Committee, the Juvenile Justice Planning Committee, the Law Enforcement Planning Committee, the Corrections Planning Committee, and the Juvenile Code Revision Committee.

(b) The composition of the adjunct committees shall be as designated by the Governor by executive order, except for the Judicial Planning Committee, the composition of which shall be designated by the Supreme Court. The Governor's appointees shall serve two-year terms beginning March 1, of each odd-numbered year, and members of the Judicial Planning Committee shall serve at the pleasure of the Supreme Court.

(c) The adjunct committees created herein shall report directly to the Governor's Crime Commission and shall have the following powers and duties:

(1) The Crime Prevention and Public Information Committee shall advise the Governor's Crime Commission on the most appropriate and effective methods to foster public awareness of the role of individual citizens, businesses, and community organizations in the prevention

and reporting of crime and to foster public awareness of the ability and responsibility of individuals to have an impact on the crime problem; it shall also advise the Governor's Crime Commission on the most appropriate and effective methods of preventing crime, on mobilizing the citizenry through "Community Watch" and other related programs to prevent crime, and on educating the public about the nature of particular crimes and the most effective methods of preventing them.

(2) The Law Enforcement Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to law enforcement, including detention; shall participate in the development of the law-enforcement component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of law-enforcement services; and shall offer technical assistance to State and local agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of law-enforcement services.

(3) The Judicial Planning Committee (which shall be appointed by the Supreme Court) shall establish court improvement priorities, define court improvement programs and projects, and develop an annual judicial plan in accordance with the Crime Control Act of 1976 (Public Law 94-503); shall advise the Governor's Crime Commission on all matters which are referred to it relevant to the courts; shall consider and recommend priorities for the improvement of judicial services; and shall offer technical assistance to State agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of judicial services.

(4) The Corrections Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to corrections; shall participate in the development of the adult corrections component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of correction services; and shall offer technical assistance to State agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of corrections.

(5) The Juvenile Justice Planning Committee shall advise the Governor's Crime Commission on all matters which are referred to it relevant to juvenile justice; shall participate in the development of the juvenile justice component of the State's comprehensive plan; shall consider and recommend priorities for the improvement of juvenile justice services; and shall offer technical assistance to State and local agencies in the planning and implementation of programs contemplated by the comprehensive plan for the improvement of juvenile justice.

(6) The Juvenile Code Revision Committee shall study problems relating to young people who come within the juvenile jurisdiction of the district court as defined by Article 23 of Chapter 7A of the General Statutes and develop a legislative plan which will best serve the needs of young people and protect the interests of the State; shall study the existing laws, services, agencies and commissions and recommend whether they should be continued, amended, abolished or merged; and shall take steps to insure that all agencies, organizations, and private citizens in the State of North Carolina have an opportunity to lend advice and suggestions to the development of a revised juvenile code. If practical, the Committee shall submit a preliminary report to the General Assembly prior to its adjournment in 1977. It shall make a full and complete report to the General Assembly by March 1, 1979. This adjunct committee shall terminate on February 28, 1979.

(d) The Governor shall have the power to remove any member of any adjunct committee from the Committee for misfeasance, malfeasance or nonfeasance. Each Committee shall meet at the call of the chairman or upon written request of one third of its membership. A majority of a committee shall constitute a quorum for the transaction of business.

(e) The actions and recommendations of each adjunct committee shall be subject to the final approval of the Governor's Crime Commission. (1975, c. 663; 1977, c. 11, s. 3.)

Editor's Note. — The above section is § 143B-339 as rewritten by Session Laws 1977, c. 11, s. 3. It has been recodified in this Article because of the transfer of the Governor's Crime Commission (formerly the Governor's Law and Order Commission) to the Department of Crime Control and Public Safety.

Session Laws 1977, c. 11, s. 7, contains a severability clause.

Part 4. State Fire Commission.

§ 143B-481. State Fire Commission created — membership. — There is hereby created the State Fire Commission of the Department of Crime Control and Public Safety which shall be composed of nine voting members consisting of the following: the Executive Secretary of the North Carolina State Firemen's Association, the Legislative Chairman of the North Carolina State Firemen's Association, the Executive Secretary of the North Carolina Association of Fire Chiefs, the Director of Fire and Rescue Services Training of the Department of Insurance, the Director of Fire Services Training of the Department of Community Colleges, the Director of the North Carolina Fire College and Pump School, one mayor or other elected official of a municipality to be appointed by the Governor after consultation with the President of the North Carolina League of Municipalities, one county commissioner to be appointed by the Governor after consultation with the President of the North Carolina Association of County Commissioners, and one member to be appointed by the Governor from the public at large, not employed by government and not directly involved in fire fighting.

The following State officials shall serve by virtue of their office as nonvoting members of the State Fire Commission: the Commissioner of Insurance, the Commissioner of Labor, the State Auditor, the Attorney General and the Secretary of Crime Control and Public Safety, or their respective designees.

Of the members initially appointed by the Governor, the representative of the public at large shall serve for three years, the representative of the League of Municipalities shall serve for two years and the representative of the Association of County Commissioners shall serve for one year. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Governor may make appointments to fill the unexpired portions of the appointed members of any term vacated by reason of the death, resignation or removal from office. In making such appointment he shall preserve the composition of the Commission required above. Vacancies caused by reason of the death or resignation of ex officio members shall be filled by their respective successors in office.

Members of the State Fire Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5 or G.S. 138-6, as the case may be. (1977, c. 1064, s. 1.)

Editor's Note. — Session Laws 1977, c. 1064, s. 2, contains a severability clause.

§ 143B-482. State Fire Commission — powers and duties. — The State Fire Commission shall have the following powers and duties:

(1) To formally adopt a State Fire Education and Training Plan and a State Master Plan for Fire Prevention and Control;

(2) To assist and participate with State and local fire prevention and control agencies in the improvement of fire prevention and control in North Carolina;

(3) To increase the professional skills of fire protection and fire-fighting personnel;

(4) To encourage public support for fire prevention and control;

(5) To accept gifts, bequests, devises, grants, matching funds, and other considerations from private or governmental sources for use in promoting its work;

(6) To make grants for use in pursuing its objectives, under such conditions as are deemed to be necessary and such other powers as may be necessary to carry out the State's duties with respect to all grants to the State by the National Fire Prevention and Control Administration of the United States Department of Commerce;

(7) To make studies and recommendations for the improvement of fire prevention and control in the State and to make studies and recommendations for the coordination and implementation of effective fire prevention and control and for effective fire prevention and control education;

(8) To set objectives and priorities for the improvement of fire prevention and control throughout the State;

(9) To advise State and local interests of opportunities for securing federal assistance for fire prevention and control and for improving fire prevention and control administration and planning within the State of North Carolina;

(10) To assist State agencies and institutions of local government and combinations thereof in the preparation and processing of applications for financial aid and to support fire prevention and control, planning and administration;

(11) To encourage and assist coordination at the federal, State and local government levels in the preparation and implementation of fire prevention and control administrative improvements and crime reduction plans;

(12) To apply for, receive, disburse and audit the use of funds received for [from] any public and private agencies and instrumentalities for fire prevention and control, its administration and plans therefor;

(13) To enter into monitoring and evaluating the results of contracts and agreements necessary or incidental to the discharge of its assigned responsibilities;

(14) To provide technical assistance to State and local fire prevention and control agencies in developing programs for improvement of the fire prevention and control system; and

(15) To take such other actions as may be deemed necessary or appropriate to carry out its assigned duties and responsibilities. (1977, c. 1064, s. 1.)

§ 143B-483. State Fire Commission — organization; rules and regulations; meetings. — (a) First Meeting; Organization. — Within 30 days after its appointment, the State Fire Commission shall meet on call of the Secretary of Crime Control and Public Safety and shall elect from its voting members a chairman and vice-chairman.

(b) Rules and Regulations. — The State Fire Commission shall adopt such rules and regulations, not inconsistent with the laws of this State as may be required by the federal government for grants-in-aid for fire protection and fire-fighting purposes which may be made available to the State by the federal government. The State Fire Commission shall be the single State agency responsible for establishing policy, planning and carrying out the State's duties with respect to all grants to the State by the National Fire Prevention and Control Administration of the United States Department of Commerce. In respect to such grants, the State Fire Commission shall have authority to review, approve and maintain general oversight to the State plan and its implementation, including subgrants and allocations to local units of government and local fire prevention and control agencies.

All actions taken by the State Fire Commission in the performance of its duties shall be implemented and administered by the Department of Crime Control and Public Safety.

(c) Meetings. — The State Fire Commission shall meet quarterly. Five members shall constitute a quorum. All meetings shall be open to the public. (1977, c. 1064, s. 1.)

§ 143B-484. State Fire Commission — staff. — There shall be an executive director (State Fire Administrator) selected by the State Fire Commission, who shall be appointed by the Secretary of Crime Control and Public Safety, with direct responsibilities to the Commission.

Personnel of the Department of Crime Control and Public Safety shall serve as staff to the State Fire Commission. The Department of Crime Control and Public Safety shall provide the clerical and professional services required by the State Fire Commission and, at the direction of the State Fire Commission, shall develop and administer the State Master Plan for Fire Prevention and Control and the State Fire Education and Training Plan and such additional related programs as may be established by or assigned to the State Fire Commission. (1977, c. 1064, s. 1.)

§ 143B-485. State Fire Commission — fiscal affairs. — All funds for the operation of the State Fire Commission and its staff shall be appropriated to the Department of Crime Control and Public Safety. All such funds shall be held in a separate or special account on the books of the Department of Crime Control and Public Safety with a separate financial designation or code number to be assigned by the Department of Administration or its agent. Expenditures for staff salaries and operating expenses shall be made in the same manner as expenditures of any other Department of Crime Control and Public Safety funds. The Department of Crime Control and Public Safety may hire such additional personnel as may be necessary to handle the work of the State Fire Commission, within the limits of funds appropriated to it by the State and made available to it by the federal government. (1957, c. 269, s. 1; 1977, c. 1064, s. 1.)

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in this section as enacted by Session Laws 1977, c. 1064. See § 143-344(a).

Chapter 144.

State Flag, Motto and Colors.

Sec.
144-1. State flag.
144-2. State motto.
144-3. Flags to be displayed on public buildings and institutions.
Sec.
144-4. Flags to be displayed at county courthouses.
144-5. Flags to conform to law.
144-6. State colors.

§ 144-1. State flag.—The flag of North Carolina shall consist of a blue union, containing in the center thereof a white star with the letter "N" in gilt on the left and the letter "C" in gilt on the right of said star, the circle containing the same to be one third the width of said union. The fly of the flag shall consist of two equally proportioned bars, the upper bar to be red, the lower bar to be white; the length of the bars horizontally shall be equal to the perpendicular length of the union, and the total length of the flag shall be one third more than its width. Above the star in the center of the union there shall be a gilt scroll in semicircular form, containing in black letters this inscription: "May 20th, 1775," and below the star there shall be a similar scroll containing in black letters the inscription: "April 12th, 1776." (1885, c. 291; Rev., s. 5321; C. S., s. 7535.)

§ 144-2. State motto.—The words "esse quam videri" are hereby adopted as the motto of this State, and as such shall be engraved on the great seal of North Carolina and likewise at the foot of the coat of arms of the State as a part thereof. On the coat of arms, in addition to the motto, at the bottom, there shall be inscribed at the top the words, "May 20th, 1775." (1893, c. 145; Rev., s. 5320; C. S., s. 7536.)

§ 144-3. Flags to be displayed on public buildings and institutions.—The board of trustees or managers of the several State institutions and public buildings shall provide a North Carolina flag, of such dimensions and material as they may deem best, and the same shall be displayed from a staff upon the top of each and every such building, at all times except during inclement weather, and upon the death of any State officer or any prominent citizen the flag shall be put at half-mast until the burial of such person has taken place. (1907, c. 838, s. 2; C. S., s. 7537.)

§ 144-4. Flags to be displayed at county courthouses.—The boards of county commissioners of the several counties in this State shall likewise authorize the procuring of a North Carolina flag, to be displayed either on a staff upon the top or draped behind the judge's stand, in each and every courthouse in the State, and the State flag shall be displayed at each and every term of court held, and on such other public occasions as the commissioners may deem proper. (1907, c. 838, s. 3; C. S., s. 7538.)

§ 144-5. Flags to conform to law.—No State flag shall be allowed in or over any building here mentioned unless such flag conforms to the description of the State flag contained in this chapter. (1907, c. 838, s. 4; C. S., s. 7539.)

§ 144-6. State colors.—Red and blue, of shades as adopted and appearing in the North Carolina State flag and the American flag, shall be, and hereby are, declared to be the official State colors for the State of North Carolina.

The use of such official State colors on ribbons attached to State documents with the great seal and/or seals of State departments is permissive and discretionary but not directory. (1945, c. 878.)

Chapter 145.

State Flower, Bird, Tree, Shell, Mammal, Fish, Insect and Stone.

Sec.
145-1. State flower.
145-2. State bird.
145-3. State tree.
145-4. State shell.

Sec.
145-5. State mammal.
145-6. State saltwater fish.
145-7. State insect.
145-8. State stone.

§ 145-1. State flower.—The dogwood is hereby adopted as the official flower of the State of North Carolina. (1941, c. 289.)

§ 145-2. State bird.—The cardinal is hereby declared to be the official State bird of North Carolina. (1943, c. 595.)

§ 145-3. State tree.—The pine is hereby adopted as the official State tree of the State of North Carolina. (1963, c. 41.)

§ 145-4. State shell.—The Scotch bonnet is hereby adopted as the official State shell of the State of North Carolina. (1965, c. 681.)

§ 145-5. State mammal. — The gray squirrel *(Sciurus carolinensis)* is hereby adopted as the official State mammal of the State of North Carolina. (1969, c. 1207.)

§ 145-6. State saltwater fish. — The channel bass (red drum) is hereby adopted as the official State saltwater fish of the State of North Carolina. (1971, c. 274.)

§ 145-7. State insect. — The honeybee is hereby adopted as the official State insect of the State of North Carolina. (1973, c. 55.)

§ 145-8. State stone.—The emerald is hereby adopted as the official State precious stone of the State of North Carolina. (1973, c. 136, s. 1.)

Chapter 146.

State Lands.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

Article 1.

General Provisions.

Sec.
146-1. Intent of Subchapter.
146-2. Department of Administration given control of certain State lands; general powers.

Article 2.

Dispositions.

146-3. What lands may be sold.
146-4. Sales of certain lands; procedure; deeds; disposition of proceeds.
146-5. Reservation to the State.
146-6. Title to land raised from navigable water.
146-6.1. [Repealed.]
146-7. Sale of timber rights; procedure; instruments conveying rights; disposition of proceeds.
146-8. Disposition of mineral deposits in State lands under water.
146-9. Disposition of mineral deposits in State lands not under water.
146-10. Leases.
146-11. Easements, rights-of-way, etc.
146-12. Easements in lands covered by water.
146-13. Erection of piers on State lakes restricted.
146-14. Proceeds of dispositions of certain State lands.
146-15. Definition of net proceeds.

Article 3.

Discovery and Reclamation.

146-16. Department of Administration to supervise.
146-17. Mapping and discovery agreements.

Article 4.

Miscellaneous Provisions.

146-18. Recreational use of State lakes regulated.
146-19. Fishing license fees for nonresidents of counties in which State lakes are situated.
146-20. Forfeiture for failure to register deeds.

SUBCHAPTER II. ALLOCATED STATE LANDS.

Article 5.

General Provisions.

146-21. Intent of Subchapter.

Article 6.

Acquisitions.

Sec.
146-22. All acquisitions to be made by Department of Administration.
146-22.1. Acquisition of property.
146-23. Agency must file statement of needs; Department must investigate.
146-23.1. Buildings having historic, architectural or cultural significance.
146-24. Procedure for purchase or condemnation.
146-24.1. The power of eminent domain.
146-25. Leases and rentals.
146-25.1. Proposals to be secured for leases.
146-26. Donations and devises to State.
146-26.1. Relocation assistance.

Article 7.

Dispositions.

146-27. The role of the Department of Administration in sales, leases, and rentals.
146-28. Agency must file application with Department; Department must investigate.
146-29. Procedure for sale, lease, or rental.
146-30. Application of net proceeds.

Article 8.

Miscellaneous Provisions.

146-31. Right of appeal to Governor and Council of State.
146-32. Exemptions as to leases, etc.
146-33. State agencies to locate and mark boundaries of lands.
146-34. Agencies may establish agreed boundaries.
146-35. Severance approval delegation.
146-36. Acquisitions for and conveyances to federal government.

SUBCHAPTER III. ENTRIES AND GRANTS.

Article 9.

General Provisions.

146-37. Intent of Subchapter.
146-38. Pending entries.
146-39. Void grants; not color of title.

Article 10.

Surveys.

146-40. Record of surveys to be kept.
146-41. Former surveys recorded.
146-42. What record must show; received as evidence.

Article 11.

Grants.

Sec.
146-43. Cutting timber on land before obtaining a grant.
146-44. Card index system for grants.
146-45. Grant of Moore's Creek Battlefield authorized.

Article 12.

Correction of Grants.

146-46. When grants may issue.
146-47. Change of county line before grant issued or registered.
146-48. Entries in wrong county.
146-49. Errors in surveys of plots corrected.
146-50. Resurvey of lands to correct grants.
146-51. Lost seal replaced.
146-52. Errors in grants corrected.
146-53. Irregular entries validated.
146-54. Grant signed by deputy Secretary of State validated.
146-55. Registration of grants.
146-56. Time for registering grants extended.
146-57. Time for registering grants and other instruments extended.
146-58. Time for registering grants further extended.
146-59. Time for registering grants or copies extended.
146-60. Further extension of time for registering grants or copies for two years from January 1, 1947.
146-60.1. Further extension of time for registering grants or copies for four years from January 1, 1977.

Article 13.

Grants Vacated.

146-61. Civil action to vacate grant.
146-62. Judgment recorded in Secretary of State's office.
146-63. Action by State to vacate grants.

SUBCHAPTER IV. MISCELLANEOUS.

Article 14.

General Provisions.

Sec.
146-64. Definitions.
146-65. Exemptions from Chapter.
146-66. Voidability of transactions contrary to Chapter.
146-67. Governor to employ persons.
146-68. Statutes of limitations.
146-69. Service on State in land actions.
146-70. Institution of land actions by the State.

Article 15.

State Land Fund.

146-71. State Land Fund created.
146-72. Purpose.
146-73. Administration.

Article 16.

Form of Conveyances.

146-74. Approval of conveyances.
146-75. Execution; signature; attestation; seal.
146-76. Exclusive method of conveying State lands.
146-77. Admission to registration in counties.
146-78. Validation of conveyances of state-owned lands.

Article 17.

Title in State.

146-79. Title presumed in the State; tax titles.
146-80. Statute of limitations.
146-81. Title to lands sold for taxes.
146-82. Protection of interest in lands sold for taxes.

Article 18.

Miscellaneous.

146-83. Vested rights protected.

Editor's Note. — Most of the cases cited in the annotations under the various sections of this Chapter were decided under corresponding sections of this Chapter as it stood before its revision in 1959, or under earlier statutes from which they derived.

SUBCHAPTER I. UNALLOCATED STATE LANDS.

ARTICLE 1.

General Provisions.

§ 146-1. Intent of Subchapter.—It is the purpose and intent of this Subchapter to vest in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State as hereinafter provided, responsibility for the management, control and disposition of all vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands, title to which is vested in the State or in any State agency, to be exercised subject to the provisions of this Subchapter. (1959, c. 683, s. 1.)

Editor's Note.—For article on "Estuarine Land of North Carolina: Legal Aspect of Ownership, Use and Control," see 46 N.C.L. Rev. 779 (1968).

§ 146-2. Department of Administration given control of certain State lands; general powers. — The power to manage, control, and dispose of the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands is hereby vested in the Department of Administration, subject to rules and regulations adopted by the Governor and approved by the Council of State, and subject to the provisions of this Subchapter. The Department of Administration shall have the following general powers and duties with respect to those lands:

(1) To take such measures as it deems necessary to establish, protect, preserve, and enhance the interest of the State in those lands, and to call upon the Attorney General for legal assistance in performing this duty.

(2) Subject to the approval of the Governor and Council of State, to adopt such rules and regulations at it may deem necessary to carry out its duties under the provisions of this Subchapter. (1959, c. 683, s. 1.)

ARTICLE 2.

Dispositions.

§ 146-3. What lands may be sold. — Any State lands may be disposed of by the State in the manner prescribed in this Chapter, with the following exceptions:

(1) No submerged lands may be conveyed in fee, but easements therein may be granted, as provided in this Subchapter.

(2) No natural lake belonging to the State or to any State agency on January 1, 1959, and having an area of 50 acres or more, may be in any manner disposed of, but all such lakes shall be retained by the State for the use and benefit of all the people of the State and administered as provided for other recreational areas owned by the State. (1854-5, c. 21; R.C., c. 42, s. 1; Code, s. 2751; Rev., s. 1693; 1911, c. 8; C. S., ss. 7540, 7544; 1929, c. 165; G. S., ss. 146-1, 146-7, 146-12; 1959, c. 683, s. 1.)

Editor's Note. — For note on defining navigable waters and the application of the public trust doctrine on North Carolina, see 49 N.C.L. Rev. 888 (1971).

Ownership of Foreshore Remains in State. —There is nothing in this section or § 146-64 to change the general rule that ownership of the foreshore remains in the State. On the contrary, it is noteworthy that a special class was created for the protection of the foreshore and the marginal seas. Therefore littoral rights do not include ownership of the foreshore. Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970).

Local Act Controlling over Inconsistent Provision of Subdivision (1). — Session Laws 1963, c. 511, which granted the town of Carolina Beach title in reclaimed seashore lands down to the low watermark controls over an inconsistent provision in subdivision (1) of this section which provides that State land under navigable waters cannot be conveyed in fee. Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970).

Stated in Capune v. Robbins, 273 N.C. 581, 160 S.E.2d 881 (1968).

§ 146-4. Sales of certain lands; procedure; deeds; disposition of proceeds. — The Department of Administration may sell the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, at public or private sale, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every deed conveying any part of those lands in fee shall be executed in the manner required by G.S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein required. The net proceeds of all such sales of those lands shall be paid into the State Literary Fund. Whenever negotiations are begun by the Department for the purpose of selling swampland or the timber thereon, the Department shall promptly notify the State Board of Education of that fact. If the Board deems the proposed sale inadvisable, it may so inform the Governor and Council of State, who may give due consideration to the representations of the Board in determining whether to approve or disapprove the proposed transaction. (R. C., c. 66, s. 12; 1872-3, c. 194, s. 2; Code, ss. 2514, 2515, 2529; 1889, c. 243, s. 4; Rev., s. 4049; C. S., s. 7621; G. S., s. 146-94; 1959, c. 683, s. 1.)

§ 146-5. Reservation to the State.—In any sale of the vacant and unappropriated lands or swamplands by the State, the following powers may be expressly reserved to the State, to be exercised according to law:

(1) The State may make any reasonable and expedient regulations respecting the repair of the canals which have been cut by the State, or the enlargement of such canals.

(2) The State may impose taxes on the lands benefited by those canals for their repair, and they shall not be closed.

(3) The navigation of the canals shall be free to all persons, subject to a right in the State to impose tolls.

(4) All landowners on the canals may drain into them, subject only to such general regulations as now are or hereafter may be made by law in such cases.

(5) The roads along the banks of the canals shall be public roads. (1872-3, c. 118; Code, s. 2534; Rev., s. 4050; C. S., s. 7622; G. S., s. 146-95; 1959, c. 683, s. 1.)

§ 146-6. Title to land raised from navigable water.—(a) If any land is, by any process of nature or as a result of the erection of any pier, jetty or breakwater, raised above the high watermark of any navigable water, title thereto shall vest in the owner of that land which, immediately prior to the raising of the land in question, directly adjoined the navigable water. The tract, title to which is thus vested in a riparian owner, shall include only the front of his formerly riparian tract and shall be confined within extensions of his property lines, which extensions shall be perpendicular to the channel, or main watercourses.

(b) If any land is, by act of man, raised above the high watermark of any navigable water by filling, except such filling be to reclaim lands theretofore lost to the owner by natural causes or as otherwise provided under the proviso of subsection (d), title thereto shall vest in the State and the land so raised shall become a part of the vacant and unappropriated lands of the State, unless the Governor and Council of State shall have previously approved, in the manner provided in subsection (c) of this section, the commission of the act which caused the raising of the land in question.

(c) If any owner of land adjoining any navigable water desires to fill in the area immediately in front of his land, he may apply to the Department of Administration for an easement to make such fill. The applicant shall deliver to each owner of riparian property adjoining that of the applicant, a copy of the application filed with the Department of Administration, and each such riparian owner shall have 30 days from the date of such service to file with the Department of Administration written objections to the granting of the proposed easement. If the Department of Administration finds that the proposed fill will not impede navigation or otherwise interfere with the use of the navigable water by the public or injure any adjoining riparian owner, it shall issue to such applicant an easement to fill and shall fix the consideration to be paid for the easement, subject to the approval of the Governor and Council of State in each instance. The granting by the State of the permit or easement so to fill shall be deemed conclusive evidence and proof that the applicant has complied with all requisite conditions precedent to the issuance of such permit or easement, and his right shall not thereafter be subject to challenge by reason of any alleged omission on his part. None of the provisions of this section shall relieve any riparian owner of the requirements imposed by the applicable laws and regulations of the United States. Upon completion of such filling, the Governor and Council of State may, upon request, direct the execution of a quitclaim deed therefor to the owner to whom the easement was granted, conveying the land so raised, upon such terms as are deemed proper by the Department and approved by the Governor and Council of State.

(d) If an island is, by any process of nature or by act of man, formed in any navigable water, title to such island shall vest in the State and the island shall become a part of the vacant and unappropriated lands of the State. Provided, however, that if in any process of dredging, by either the State or federal government, for the purpose of deepening any harbor or inland waterway, or clearing out or creating the same, a deposit of the excavated material is made upon the lands of any owner, and title to which at the time is not vested in either the State or federal government, or any other person, whether such excavation be deposited with or without the approval of the owner or owners of such lands, all such additions to lands shall accrue to the use and benefit of the owner or owners of the land or lands on which such deposit shall have been made, and such owner or owners shall be deemed vested in fee simple with the title to the same.

(e) The Governor and Council of State may, upon proof satisfactory to them that any land has been raised above the high watermark of any navigable water by any process of nature or by the erection of any pier, jetty or breakwater, and that this, or any other provision of this section vests title in the riparian owner thereof, whenever it may be necessary to do so in order to establish clear title to such land in the riparian owner, direct execution of a quitclaim deed thereto, conveying to such owner all of the State's right, title, and interest in such raised land. (1959, c. 683, s. 1.)

Applied in Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970).

§ 146-6.1: Repealed by Session Laws 1977, c. 366.

§ 146-7. Sale of timber rights; procedure; instruments conveying rights; disposition of proceeds. — The Department of Administration may sell timber rights in the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, at public or private sale, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every instrument conveying timber rights shall be executed in the manner required of deeds by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein required, or by the agency designated by the Governor and Council of State to approve conveyances of such rights. The net proceeds of all sales of timber from those lands shall be paid into the State Literary Fund. (1959, c. 683, s. 1.)

§ 146-8. Disposition of mineral deposits in State lands under water. — The State, acting at the request of the Department of Natural Resources and Community Development, is fully authorized and empowered to sell, lease, or otherwise dispose of any and all mineral deposits belonging to the State which may be found in the bottoms of any sounds, rivers, creeks, or other waters of the State. The State, acting at the request of the Department of Natural Resources and Community Development, is authorized and empowered to convey or lease to such person or persons as it may, in its discretion, determine, the right to take, dig, and remove from such bottoms such mineral deposits found therein belonging to the State as may be sold, leased, or otherwise disposed of to them by the State. The State, acting at the request of the Department of Natural Resources and Community Development, is authorized to grant to any person, firm, or corporation, within designated boundaries for definite periods of time, the right to such mineral deposits, or to sell, lease, or otherwise dispose of same upon such other terms and conditions as may be deemed wise and expedient by the State and to the best interest of the State. Before any such sale, lease, or contract is made, it shall be approved by the Department of Administration and by the Governor and Council of State.

Any sale, lease, or other disposition of such mineral deposits shall be made subject to all rights of navigation and subject to such other terms and conditions as may be imposed by the State.

The net proceeds derived from the sale, lease, or other disposition of such mineral deposits shall be paid into the treasury of the State, but the same shall be used exclusively by the Department of Natural Resources and Community Development in paying the costs of administration of this section and for the development and conservation of the natural resources of the State, including any advertising program which may be adopted for such purpose, all of which shall be subject to the approval of the Governor, acting by and with the advice of the Council of State. (1937, c. 285; C. S., s. 113-26; 1959, c. 683, s. 1; 1973, c. 1262, s. 86; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in four places.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 146-9. Disposition of mineral deposits in State lands not under water. —The Department of Administration may sell, lease, or otherwise dispose of mineral rights or deposits in the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, not lying beneath the waters of the State, at such times, upon such consideration, in such portions, and upon such terms as are deemed proper by the Department and approved by the Governor and Council of State. Every instrument conveying such rights shall be executed in the manner required of deeds by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein provided, or by the agency designated by the Governor and Council of State to approve conveyances of such rights. The net proceeds of dispositions of all such mineral rights or deposits shall be paid into the State Literary Fund. (1959, c. 683, s. 1.)

§ 146-10. Leases. — The Department of Administration may lease or rent the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, at such times, upon such consideration, in such portions, and upon such terms as it may deem proper. Every lease or rental of such lands by the Department shall be approved by the Governor and Council of State, or by the agency designated by the Governor and Council of State to approve such leases and rentals. (1959, c. 683, s. 1.)

§ 146-11. Easements, rights-of-way, etc. — The Department of Administration may grant easements, rights-of-way, dumping rights and other interests in State lands, for the purpose of

(1) Cooperating with the federal government,
(2) Utilizing the natural resources of the State, or
(3) Otherwise serving the public interest.

The Department shall fix the terms and consideration upon which such rights may be granted. Every instrument conveying such interests shall be executed in the manner required of deeds by G. S. 146-74 through 146-78, and shall be approved by the Governor and Council of State as therein provided, or by the agency designated by the Governor and Council of State to approve conveyances of such interests. (1959, c. 683, s. 1.)

§ 146-12. Easements in lands covered by water. — The Department of Administration may grant, to adjoining riparian owners, easements in lands covered by navigable waters or by the waters of any lake owned by the State for such purposes and upon such conditions as it may deem proper, with the approval of the Governor and Council of State. The Department may, with the approval of the Governor and Council of State, revoke any such easement upon the violation by the grantee or his assigns of the conditions upon which it was granted.

Every such easement shall include only the front of the tract owned by the riparian owner to whom the easement is granted, shall extend no further than the deep water, and shall in no respect obstruct or impair navigation.

When any such easement is granted in front of the lands of any incorporated town, the governing body of the town shall regulate the line on deep water to which wharves may be built. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; 1889, c. 555; 1891, c. 532; 1893, cc. 4, 17, 349; 1901, c. 364; Rev., s. 1696; C. S., s. 7543; G. S., s. 146-6; 1959, c. 683, s. 1.)

Local Modification. — Craven: 1973, c. 1129.

Jurisdiction of City. — In State v. Eason, 114 N. C. 787, 19 S. E. 88 (1894), it was held that a city whose limits extended to a navigable stream has jurisdiction only to the low watermark.

Entry by Riparian Owner. — Navigable waters may be entered to the deep water line, for wharfage purposes. Barfoot v. Willis, 178 N.C. 200, 100 S.E. 303 (1919), but this right of entry is restricted to a riparian owner, and applies only to his immediate water front. Bond v. Wool, 107 N.C. 139, 12 S.E. 281 (1890).

A grant to a riparian owner of land covered by navigable water conveys only an easement therein, and a deed of the land adjoining the navigable water conveys the easement in the land covered by the water. Shephard's Point Land Co. v. Atlantic Hotel, 132 N.C. 517, 44 S.E. 39 (1903).

Regulating Deep Water Line by Mandamus. — Mandamus will lie by the riparian owner of land lying within the limits of an incorporated town, or city, to compel the town or city to "regulate the deep water line to which wharves may be built" as required by this section. Wool v. Town of Edenton, 115 N.C. 10, 20 S.E. 165 (1894).

Prior to this case the court had held, because of the former wording of the statute, that a riparian owner in a city could not make an entry and the Secretary of State could not issue a grant until the line of deep water had been regulated by the municipal corporation. Wool v. Saunders, 108 N.C. 729, 13 S.E. 294 (1891).

Rights Go with Land. — Riparian rights being incident to land abutting on navigable water cannot be conveyed without a conveyance of such land, and lands covered by navigable water are subject to entry only by the owner of the land abutting thereon. Zimmerman v. Robinson, 114 N.C. 39, 19 S.E. 102 (1874); Land Co. v. Hotel, 134 N.C. 397, 46 S.E. 748 (1904). An adjacent riparian owner acquires only an easement in the bed of navigable waters in front of his shore lots for the purpose of building a wharf. Atlantic & N.C.R.R. v. Way, 172 N.C. 774, 90 S.E. 937 (1916).

Fishing Rights. — The right to build a wharf in front of riparian property does not give the riparian owner exclusive fishing privilege in the navigable part of the stream on which his property fronts. But the riparian owner will be protected from wrongtul interference. Beil v. Smith, 171 N.C. 116, 87 S.E. 987 (1916).

Erroneous Survey of Deep Water Line. — In case the line marked out is not the deep water line a riparian owner has a right to have the error corrected, and he will not be estopped because of a grant had under the erroneous survey. Wool v. Town of Edenton, 117 N.C. 1, 23 S.E. 40 (1895).

Quoted in Capune v. Robbins, 273 N.C. 581, 160 S.E.2d 881 (1968).

§ 146-13. Erection of piers on State lakes restricted. — No person, firm, or corporation shall erect upon the floor of, or in or upon, the waters of any State lake, any dock, pier, pavilion, boathouse, bathhouse, or other structure, without first having secured a permit to do so from the Department of Administration, or from the agency designated by the Department to issue such permits. Each permit shall set forth in required detail the size, cost, and nature of such structure; and any person, firm, or corporation erecting any such structure without a proper permit or not in accordance with the specifications of such permit shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars ($50.00) or imprisoned not exceeding 30 days. The State may immediately proceed to remove such unlawful structure through due process of law, or may abate or remove the same as a nuisance after five days' notice. (1933, c. 516, s. 3; G. S., s. 146-10; 1959, c. 683, s. 1.)

§ 146-14. Proceeds of dispositions of certain State lands. — The net proceeds of all sales, leases, rentals, or other dispositions of the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, and all interests and rights therein, shall be paid into the State Literary Fund, except as otherwise provided in this Chapter. (1959, c. 683, s. 1.)

§ 146-15. Definition of net proceeds. — For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;
(2) Amounts paid pursuant to G. S. 105-296.1 if any; and
(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, no service charge shall be paid into the State Land Fund from proceeds derived from the sale of land or products of land owned or held for the use of the Wildlife Resources Commission, or purchased or acquired with funds of the Wildlife Resources Commission. (1959, c. 683, s. 1.)

Editor's Note. — The reference in this section to § 105-296.1 is to that section as it existed before the revision of the Machinery Act by Session Laws 1971, c. 806. See now § 105-279.

ARTICLE 3.

Discovery and Reclamation.

§ 146-16. Department of Administration to supervise. — The Department of Administration shall be responsible for discovering, inventorying, surveying, and reclaiming the vacant and unappropriated lands, swamplands, and lands acquired by the State by virtue of being sold for taxes, and shall take all measures necessary to that end. All expenses incurred in the performance of these activities shall be paid from the State Land Fund, unless otherwise provided by the General Assembly. (1959, c. 683, s. 1.)

§ 146-17. Mapping and discovery agreements. — The Department of Administration, acting on behalf of the State, for the purpose of discovering State lands, may, with the approval of the Governor and Council of State, enter into agreements with counties, municipalities, persons, firms, and corporations providing for the discovery of State land by the systematic mapping of the counties of the State and by other appropriate means. All expenses incurred by the Department incident to such mapping and discovery agreements shall be paid from the State Land Fund, unless otherwise provided by the General Assembly. (1959, c. 683, s. 1.)

ARTICLE 4.

Miscellaneous Provisions.

§ 146-18. Recreational use of State lakes regulated. — All recreation, except hunting and fishing, in, upon, or above any or all of the State lakes referred to in this Subchapter may be regulated in the public interest by the State agency having administrative authority over these areas. (1933, c. 516, s. 1; G. S., s. 146-8; 1959, c. 683, s. 1.)

§ 146-19. Fishing license fees for nonresidents of counties in which State lakes are situated. — The Wildlife Resources Commission, through its authorized agent or agents, is hereby authorized to require of nonresidents of the county within which a State lake is situated a daily or weekly permit in lieu of the regular "resident State license" for fishing with hook and line or rod and reel within said lake in accordance with the regulations of the Commission relating to said lake. Except for the provisions of this section, the laws and regulations dealing with the issuance of fishing permits by said Commission must be complied with. (1933, c. 516, s. 4; G. S., s. 146-11; 1959, c. 683, s. 1.)

§ 146-20. Forfeiture for failure to register deeds. — All the grants and deeds for swamplands made prior to November 1, 1883, must have been proved and registered, in the county where the lands are situate, within 12 months from November 1, 1883, and every such grant or deed, not being so registered within that time, shall be void, and the title of the proprietor in such lands shall revert to the State; but the provisions of this section shall be applicable only to the swamplands which have been surveyed or taken possession of by, or are vested in, the State or its agencies. (R. S., c. 67, s. 10; R. C., c. 66, s. 10; Code, ss. 2513, 3866; Rev., s. 4046; C. S., s. 7623; G. S., s. 146-96; 1959, c. 683, s. 1.)

SUBCHAPTER II. ALLOCATED STATE LANDS.

ARTICLE 5.

General Provisions.

§ 146-21. Intent of Subchapter. — It is the purpose and intent of this Subchapter to provide for and regulate the acquisition, disposition, and management of all State lands other than the vacant and unappropriated lands, swamplands, lands acquired by the State by virtue of being sold for taxes, and submerged lands. (1959, c. 683, s. 1.)

ARTICLE 6.

Acquisitions.

§ 146-22. All acquisitions to be made by Department of Administration. —Every acquisition of land on behalf of the State or any State agency, whether by purchase, condemnation, lease, or rental, shall be made by the Department of Administration and approved by the Governor and Council of State. (1957, c. 584, s. 6; G. S., s. 146-103; 1959, c. 683, s. 1.)

The procedures for acquisition to the time of condemnation are governed by this Article, while the condemnation, if required, is regulated by Article 9 of Chapter 136. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

No Carte Blanche to Condemn Property. — Where plaintiff argued that § 146-22 et seq. and §143-341(4)d give the Department (with the approval of the Governor and Council of State) carte blanche to condemn property, the Supreme Court held that the wording of the statutes, their legislative history, and the actualities of political and economic life make it clear that the General Assembly did no such thing. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Power of Eminent Domain Not Impliedly Granted. — By § 146-22 et seq. the legislature merely appointed the Department of Administration as acquisition agent and established the procedure it should follow in acquiring land. A statute which merely sets forth a mode of procedure will not impliedly grant the power of eminent domain. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The Department can only effect the condemnations which the legislature authorizes. It may not decide the public purpose or initiate the project for which the State's power of eminent domain may be used. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Steps Required for Acquisition of Land by Purchase or Condemnation. — Section 146-22 et seq. provides that all acquisitions of land by the State or any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. Before the Department can acquire land by purchase or condemnation the following steps must be taken: (1) The agency must file with the Department an application setting forth its need for the requested acquisition. (2) The Department "must investigate all aspects of the requested acquisition" (including the availability of the necessary funds) as detailed in § 146-23. (3) After investigation, the Department must determine that the best interests of the State require that the land be acquired. (4) The Department must then negotiate with the owners for the purchase. If terms are agreed upon and the Governor and Council of State approve them, the Department buys the land. (5) If negotiations are unsuccessful and the Governor and Council of State give permission, the Department institutes condemnation proceedings as provided in § 146-24 and § 136-103. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Applied in State v. Johnson, 282 N.C. 1, 191 S.E.2d 641 (1972).

§ 146-22.1. Acquisition of property. — In order to carry out the duties of the Department of Administration as set forth in Chapters 143 and 146 of the General Statutes, the Department of Administration is authorized and empowered to acquire by purchase, gift, condemnation or otherwise:

(1) Lands necessary for the construction and operation of State buildings and other governmental facilities.

(2) Lands necessary for construction and operation of parking facilities.

(3) An area in the City of Raleigh bounded by Edenton Street, Person Street, Peace Street, the right-of-way of the main line of Seaboard Coast Line Railway and North McDowell Street for the expansion of State governmental facilities, the public interest in, public use of, and the necessity for the acquisition of said area, being hereby declared as a matter of legislative determination.

(4) Lands necessary for the location, expansion, operation and improvement of hospital and mental health facilities and similar institutions maintained by the State of North Carolina.

(5) Lands necessary for public parks and forestry purposes.

(6) Lands involving historical sites, together with such adjacent lands as may be necessary for their preservation, maintenance and operation.
(7) Lands necessary for the location, expansion and improvement of any educational, penal or correctional institution.
(8) Lands necessary to provide public access to the waters within the State.
(9) Lands necessary for agricultural, experimental and research facilities.
(10) Utility and access easements, rights-of-way, estates for terms of years or fee simple title to lands necessary or convenient to the operation of state-owned facilities.
(11) Lands necessary for the development and preservation of the estuarine areas of the State.
(12) Lands necessary for the development of waterways within the State.
(13) Lands necessary for acquisition of all or part of an area of environmental concern, as requested pursuant to G.S. 113A-123. (1969, c. 1091, s. 1; 1973, c. 1284, s. 2.)

Editor's Note. — Session Laws 1973, c. 1284, s. 3, as amended by Session Laws 1975, c. 452, s. 5, provides an expiration date of June 30, 1983.

No request from a State agency is necessary under present law in order for the Department of Administration to acquire property "by purchase, gift, condemnation or otherwise" for certain authorized purposes. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 146-23. Agency must file statement of needs; Department must investigate. — Any State agency desiring to acquire land, whether by purchase, condemnation, lease, or rental, shall file with the Department of Administration an application setting forth its needs, and shall furnish such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects of the requested acquisition, including the existence of actual need for the requested property on the part of the requesting agency; the availability of land already owned by the State or by any State agency which might meet the requirements of the requesting agency; the availability, value, and status of title of other land, whether for purchase, condemnation, lease, or rental, which might meet the requirements of the requesting agency; and the availability of funds to pay for land if purchased, condemned, leased, or rented. The Department of Administration may make acquisitions at the request of the Governor and Council of State upon compliance with the investigation herein required. (1957, c. 584, s. 6; G.S., s. 146-104; 1959, c. 683, s. 1; 1969, c. 1091, s. 2.)

Stated in State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 146-23.1. Buildings having historic, architectural or cultural significance. — In order to promote the use of buildings having historic, architectural or cultural significance, the Department of Administration shall inform the North Carolina Historical Commission of all geographical areas in the State within which the State is actively seeking to lease space for the accommodation of State agencies. Within 60 days of the receipt of such information, the North Carolina Historical Commission shall identify for the Department of Administration all buildings within such geographical areas that (i) are known to be of historic, architectural or cultural significance (including but not limited to buildings listed or eligible to be listed on the National Register established pursuant to 16 U.S.C. 470(a)), and (ii) which may be suitable, whether or not in need of repair, alteration or addition, for acquisition or lease to meet the public building and space needs of State agencies. In addition, the North

Carolina Historical Commission shall furnish the Department of Administration such additional information on the physical condition, usable space, and the nature and approximate costs of necessary historic rehabilitation as the department may request in order for the department to determine whether the acquisition or lease of space in such buildings is feasible and prudent.

In acquiring lease space pursuant to G.S. 146-25.1, the Department of Administration shall give preference to lease proposals involving buildings identified by the North Carolina Historical Commission as having historic, architectural or cultural significance. Provided, however, that such preference shall be given only when the Department of Administration, after investigation as provided in this Article, determines that such proposal is feasible, prudent and in the best interest of the State, as compared with available alternatives, such determination to include the State's policy to preserve historic buildings. (1977, c. 998, s. 1.)

§ 146-24. Procedure for purchase or condemnation. — (a) If, after investigation, the Department determines that it is in the best interest of the State that land be acquired, the Department shall proceed to negotiate with the owners of the desired land for its purchase.

(b) If the purchase price and other terms are agreed upon, the Department shall then submit to the Governor and Council of State the proposed purchase, together with a copy of the deed, for their approval or disapproval. If the Governor and Council of State approve the proposed purchase, the Department shall pay for the land and accept delivery of a deed thereto. All conveyances of purchased real property shall be made to "the State of North Carolina," and no such conveyance shall be made to a particular agency, or to the State for the use or benefit of a particular agency.

(c) If negotiations for the purchase of the land are unsuccessful, or if the State cannot obtain a good and sufficient title thereto by purchase from the owners, then the Department of Administration may request permission of the Governor and Council of State to exercise the right of eminent domain and acquire any such land by condemnation in the same manner as is provided for the Board of Transportation by Article 9 of Chapter 136 of the General Statutes. Upon approval by the Governor and Council of State, the Department may proceed to exercise the right of eminent domain. Approval by no other State agency shall be required as a prerequisite to the exercise of the power of eminent domain by the Department. (1957, c. 584, s. 6; G.S., s. 146-105; 1959, c. 683, s. 1; 1967, c. 512, s. 1; 1973, c. 507, s. 5.)

Strict Construction. — In construing statutes which are claimed to authorize the exercise of the power of eminent domain, a strict rather than a liberal construction is the rule. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Power of Eminent Domain Is Prerogative of Sovereign State. — The right to take private property for public use, the power of eminent domain, is one of the prerogatives of a sovereign state. The right is inherent in sovereignty; it is not conferred by constitutions. Its exercise, however, is limited by the constitutional requirements of due process and payment of just compensation for property condemned. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The right of eminent domain must be conferred by statute, either in express words or by necessary implication. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The right of eminent domain lies dormant in the State until the legislature, by statute, confers the power and points out the occasion, mode, conditions and agencies for its exercise. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

Only the legislative branch can authorize the exercise of the power of eminent domain and prescribe the manner of its use. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The executive branch of the government cannot, without the authority of some statute, proceed to condemn property for its own uses. Once authority is given to exercise the power of eminent domain, the matter ceases to be wholly legislative. The executive authorities may then decide whether the power will be invoked and to what extent, and the judiciary must decide whether the statute authorizing the taking violates any constitutional rights; and the fixing of the compensation is wholly a judicial question. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

The procedures for acquisition to the time of condemnation are governed by this Article, while the condemnation, if required, is regulated by Article 9 of Chapter 136. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

That Acquisition Is in Best Interest of State Inferred. — This section does not require a specific written report that the acquisition is in the best interest of the State, and where the Department did in fact proceed to acquire the land, it was a permissible inference that such a determination was made. State v. Johnson, 278 N.C. 126, 179 S.E.2d 371 (1971).

§ 146-24.1. The power of eminent domain. — In carrying out the duties and purposes set forth in Chapters 143 and 146 of the General Statutes, the Department of Administration is vested with the power of eminent domain and shall have the right and power to acquire such lands, easements, rights-of-way or estates for years by condemnation in the manner prescribed by G.S. 146-24 of the General Statutes. The power of eminent domain herein granted is supplemental to and in addition to the power of eminent domain which may be now or hereafter vested in any State agency as defined by G.S. 146-64 and the Department of Administration may exercise on behalf of such agency the power vested in said agency or the power vested in the Department of Administration herein; and the Department of Administration may follow the procedure set forth in G.S. 146-24 or the procedure of such agency, at the option of the Department of Administration. Where such acquisition is made at the request of an agency, such agency shall make a determination of the necessity therefor; where such acquisition is on behalf of the State or at the request of the Department of Administration, such findings shall be made by the Director of Administration. Provided, however, that all such acquisitions shall have the approval of the Governor and Council of State as provided in G.S. 146-24.

This section shall not apply to public projects and condemnations for which specific statutory condemnation authority and procedures are otherwise provided. (1969, c. 1091, ss. 3, 4.)

§ 146-25. Leases and rentals. — If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be leased or rented for the use of the State or of any State agency, the Department shall proceed to negotiate with the owners for the lease or rental of such property. All lease and rental agreements entered into by the Department shall be promptly submitted to the Governor and Council of State for approval or disapproval. (1957, c. 584, s. 6; G. S., s. 146-106; 1959, c. 683, s. 1.)

§ 146-25.1. Proposals to be secured for leases. — (a) If pursuant to G.S. 146-25, the Department of Administration determines that it is in the best interest of the State to lease or rent land and the rental is estimated to exceed seven thousand five hundred dollars ($7,500) per year or the term will exceed three years, the Department shall require the State agency desiring to rent land to prepare and submit for its approval a set of specifications for its needs. Upon approval of specifications, the Department shall prepare a public advertisement. The State agency shall place such advertisement in a newspaper of general circulation in the county for proposals from prospective lessors of said land and shall make such other distribution thereof as the Department directs. The advertisement shall be run for at least five consecutive days, and shall provide that proposals shall be received for at least seven days from the date of the last advertisement in the State Property Office of the Department. The provisions of this section do not apply to property owned by governmental agencies and leased to other governmental agencies.

(b) The Department may negotiate with the prospective lessors for leasing of the needed land, taking into account not only the rental offered, but the type of land, the location, its suitability for the purposes, services offered by the lessor, and all other relevant factors.

(c) The Department of Administration shall present the proposed transaction to the Council of State for its consideration as provided by this Article. In the event the lowest rental proposed is not presented to the Council of State, that body may require a statement of justification, and may examine all proposals. (1973, c. 1448; 1975, c. 523; 1977, c. 485.)

Editor's Note. — The 1975 amendment substituted "five consecutive days" for "three consecutive weeks" and "seven days" for "20 days" in the second sentence of subsection (a).

The 1977 amendment rewrote subsection (a), substituted "The Department may negotiate" for "After receipt of the proposals, the agency may then negotiate" at the beginning of subsection (b), substituted "land" for "space" in two places in subsection (b), deleted the former second sentence of subsection (b), which read "The agency shall then present its application to the Department of Administration for the proposed lease as provided by G.S. 146-23; provided, however, that if the lowest rental proposal is not presented, a statement of justification must be submitted to the Department of Administration," and deleted "then investigate as provided by this Article, and must" following "Department of Administration shall" in the first sentence of subsection (c).

Section Is Applicable to Nonbinding Agreements to Lease Made Prior to April 13, 1974; to Leases Which Expire after April 13, 1974, and Must Be Renegotiated; and to "Emergency Situations". — See Opinion of Attorney General to Mr. M.E. White, N.C. Department of Administration, 43 N.C.A.G. 402, (1974).

§ 146-26. Donations and devises to State. — No devise or donation of land or any interest therein to the State or to any State agency shall be effective to vest title to the said land or any interest therein in the State or in any State agency until the devise or donation is accepted by the Governor and Council of State. Upon acceptance by the Governor and Council of State, title to the said land or interest therein shall immediately vest as of the time title would have vested but for the above requirement of acceptance by the Governor and Council of State. (1957, c. 584, s. 6; G. S., s. 146-107; 1959, c. 683, s. 1.)

§ 146-26.1. Relocation assistance. — In the acquisition of any real property by the Department of Administration for a public use, the Department of Administration shall be vested with the same authority as is given the Department of Transportation in Article 13 of Chapter 136 of the General Statutes. (1971, c. 540; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment substituted "Department of Transportation" for "Board of Transportation."

Article 13 of Chapter 136, referred to in this section, was repealed by Session Laws 1971, c. 1107. For present provisions as to relocation assistance, see §§ 133-5 through 133-17.

ARTICLE 7.

Dispositions.

§ 146-27. The role of the Department of Administration in sales, leases, and rentals. — Every sale, lease, or rental of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State. The Department of Administration may initiate proceedings for sales, leases, and rentals of land owned by the State or by any State agency. (1957, c. 584, s. 6; G. S., s. 146-108; 1959, c. 683, s. 1; 1977, c. 425, ss. 1, 2.)

Cross Reference. — As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see § 160A-274.

Editor's Note. — The 1977 amendment rewrote the second sentence, which formerly provided: "In no event shall the Department of Administration have authority to initiate any proceeding for the sale, lease, or rental of land heretofore allocated to or used by any State agency."

§ 146-28. Agency must file application with Department; Department must investigate. — Any State agency desiring to sell, lease, or rent any land owned by the State or by any State agency shall file with the Department of Administration an application setting forth the facts relating to the proposed transaction, and shall furnish the Department with such additional information as the Department may request relating thereto. Upon receipt of such application, the Department of Administration shall promptly investigate all aspects of the proposed transaction, including particularly present and future State need for the land proposed to be conveyed, leased, or rented. (1957, c. 584, s. 6; G. S., s. 146-109; 1959, c. 683, s. 1.)

§ 146-29. Procedure for sale, lease, or rental. — If, after investigation, the Department of Administration determines that it is in the best interest of the State that land be sold, leased, or rented, the Department shall proceed with its sale, lease, or rental, as the case may be, in accordance with rules adopted by the Governor and approved by the Council of State. If an agreement of sale, lease, or rental is reached, the proposed transaction shall then be submitted to the Governor and Council of State for their approval or disapproval. Every conveyance in fee of land owned by the State or by any State agency shall be made and executed in the manner prescribed in G. S. 146-74 through 146-78. (1957, c. 584, s. 6; G. S., s. 146-110; 1959, c. 683, s. 1.)

§ 146-30. Application of net proceeds. — The net proceeds of any disposition made in accordance with this Subchapter shall be handled in accordance with the following priority: First, in accordance with the provisions of any trust or other instrument of title whereby title to such real property was heretofore acquired or is hereafter acquired; second, as provided by any other act of the General Assembly; third, the net proceeds shall be deposited with the State Treasurer.

For the purposes of this Subchapter, the term "net proceeds" means the gross amount received from the sale, lease, rental, or other disposition of any State lands, less

(1) Such expenses incurred incident to that sale, lease, rental, or other disposition as may be allowed under rules and regulations adopted by the Governor and approved by the Council of State;
(2) Amounts paid pursuant to G. S. 105-296.1, if any; and
(3) A service charge to be paid into the State Land Fund.

The amount or rate of such service charge shall be fixed by rules and regulations adopted by the Governor and approved by the Council of State, but as to any particular sale, lease, rental, or other disposition, it shall not exceed ten percent (10%) of the gross amount received from such sale, lease, rental, or other disposition. Notwithstanding any other provision of this Subchapter, the net proceeds derived from the sale of land or products of land owned by or under the supervision and control of the Wildlife Resources Commission, or acquired or purchased with funds of that Commission, shall be paid into the Wildlife Resources Fund. Provided, however, the net proceeds derived from the sale of land or timber from land owned by or under the supervision and control of the Department of Agriculture shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Agriculture, to be used for such specific capital improvement projects or other purposes as are approved by the Director of the Budget and the Advisory Budget Commission.

Provided further, the net proceeds derived from the sale of park land owned by or under the supervision and control of the Department of Natural Resources and Community Development shall be deposited with the State Treasurer in a capital improvement account to the credit of the Department of Administration to be used for the purpose of park land acquisition as approved by the Director of the Budget and the Advisory Budget Commission. (1959, c. 683, s. 1; 1975, 2nd Sess., c. 983, s. 30; 1977, c. 771, s. 4; c. 1012.)

Editor's Note. — The 1975, 2nd Sess., amendment deleted, at the end of the first paragraph, a provision directing the proceeds to be deposited in a capital improvement account to the credit of the State agency at whose request the disposition was approved, to be used for purposes approved by the Director of the Budget and the Advisory Budget Commission. The amendment also added the proviso at the end of the section.

Session Laws 1975, 2nd Sess., c. 983, s. 30, which amended this section, provides: "Nothing in this section shall limit present authorization in G.S. 146-30 for the Wildlife Resources Commission's use of the net proceeds derived from the sale of land or products of land owned or under the supervision and control of the Commission. Also, nothing in the section shall limit the disposition of proceeds of sale under newly enacted section 11 of 1971 Session Laws, Chapter 723 which is specifically exempt from the provisions of G.S. 146-30."

The first 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

The second 1977 amendment added the fourth sentence of the third paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

The reference in this section to § 105-296.1 is to that section as it existed before the revision of the Machinery Act by Session Laws 1971, c. 806. See now § 105-279.

Service Charge Not Applicable in Gift of Trust Situation Described. — See opinion of Attorney General to Mr. Carroll L. Mann, Jr., Property Control and Construction Division, Department of Administration, 41 N.C.A.G. 738 (1972).

Exchange of Real Property by State Agencies. — Section 146-30 does, as amended, prohibit a State agency from exchanging real property surplus to its needs for other real property more suitable to the agency. Opinion of Attorney General to Mr. Nat H. Robb, Director, Real Property Division, Department of Administration, 46 N.C.A.G. 51 (1976).

ARTICLE 8.

Miscellaneous Provisions.

§ 146-31. Right of appeal to Governor and Council of State. — The requesting agency, in the event of disagreement with a decision of the Department of Administration regarding the acquisition or disposition of land pursuant to the provisions of this Subchapter, shall have the right of appeal to the Governor and Council of State. (1957, c. 584, s. 6; G.S., s. 146-113; 1959, c. 683, s. 1.)

§ 146-32. Exemptions as to leases, etc. — The Governor, acting with the approval of the Council of State, may adopt rules and regulations

(1) Exempting from any or all of the requirements of this Subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and

(2) Authorizing any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this Chapter. (1959, c. 683, s. 1.)

§ 146-33. State agencies to locate and mark boundaries of lands. — Every State agency shall locate and identify, and shall mark and keep marked, the boundaries of all lands allocated to that agency or under its control. The Department of Administration shall locate and identify, and mark and keep marked, the boundaries of all State lands not allocated to or under the control of any other State agency. The chief administrative officer of every State agency is authorized to contract with the State Department of Correction for the furnishing, upon such conditions as may be agreed upon from time to time between the State Department of Correction and the chief administrative officer of that agency, of prison labor for use where feasible in the performance of these duties. (1957, c. 584, s. 2; G.S. s. 143-145.1; 1959, c. 683, s. 1; 1967, c. 996, s. 13.)

§ 146-34. Agencies may establish agreed boundaries. — Every State agency may establish agreed boundaries between lands allocated to it or under its control, and the lands of any other owner, subject to the approval of the Governor and Council of State. The Department of Administration is authorized to establish agreed boundaries between State lands not allocated to or under the control of any other State agency and the lands of any other owner, subject to the approval of the Governor and Council of State. The Attorney General shall represent the State in all proceedings to establish boundaries which cannot be established by agreement. (1957, c. 584, s. 3; G.S., s. 143-145.2; 1959, c. 683, s. 1.)

§ 146-35. Severance approval delegation. — The Governor, acting with the approval of the Council of State, may adopt rules and regulations delegating to any other State agency the authority to approve the severance of buildings and standing timber from State lands. Upon such approval of severance, the buildings or timber affected shall be, for the purposes of this Chapter, treated as personal property. (1959, c. 683, s. 1.)

§ 146-36. Acquisitions for and conveyances to federal government. — The Governor and Council of State may, whenever they find that it is in the best interest of the State to do so, enter into any contract or other agreement which will be sufficient to comply with federal laws or regulations, binding the State to acquire for and to convey to the United States government land or any interest in land, and to do such other acts and things as may be necessary for such compliance.

The Governor and Council of State may authorize any conveyance to the United States government to be made upon nominal consideration whenever they deem it to be in the best interest of the State to do so. (1959, c. 683, s. 1.)

This section confers no power of eminent domain. State v. Core Banks Club Properties, 275 N.C. 328, 167 S.E.2d 385 (1969).

SUBCHAPTER III. ENTRIES AND GRANTS.

ARTICLE 9.

General Provisions.

§ 146-37. Intent of Subchapter. — It is the purpose and intent of this Subchapter to protect vested rights, titles, and interests acquired under the laws governing entries and grants as they read immediately prior to June 2, 1959. (1959, c. 683, s. 1.)

Editor's Note. — For note on defining navigable waters and the application of the public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

§ 146-38. Pending entries. — All entries which have been filed with entry-takers within one year prior to June 2, 1959, or filed more than one year prior to June 2, 1959, but still pending due to the filing of protest to the entry, shall be processed pursuant to the provisions of Chapter 146 of the General Statutes as it read immediately prior to June 2, 1959. Every such entry shall be paid for within one year from the date of entry, unless a protest be filed to the entry, in which event it shall be paid for within one year after final judgment on the protest; and all entries not thus paid for shall become null and void, and shall not be subject to renewal. It shall be the duty of both the enterer and protestant to conclude, within 12 months from June 2, 1959, all actions wherein a protest has been filed, and such cases shall be given preference on the dockets of the courts of the State. Any action not so concluded shall be deemed a lapse as to enterer and protestant. It is not the intent of this proviso to void any previous grant of the State of North Carolina, or to divest any vested right, but to terminate all rights accrued on account of an entry wherein no grant has been made. Provided that the resident judge of the superior court or the judge holding the superior courts of the district where the land lies, may, for good cause shown, extend the time within which an action in which a protest has been filed is required by this section to be concluded; but no single extension shall exceed one year in duration. A copy of this section shall be mailed by the Secretary of State to all parties to actions wherein protests have been filed as may be determined by records available in his office, and to all clerks of the superior court of the State. (1959, c. 683, s. 1.)

§ 146-39. Void grants; not color of title. — Every entry made and every grant issued for any lands not authorized by G.S. 146-1 through 146-77, as those sections read immediately prior to June 2, 1959, to be entered or granted shall be void.

Every grant of land issued since March 6, 1893, in pursuance of the statutes regulating entries and grants, shall, if such land or any portion thereof has been heretofore granted by this State, so far as relates to any such land heretofore granted, be absolutely void for all purposes whatever, shall confer no rights upon the grantee therein or those claiming under such grantee, and shall in no case and under no circumstances constitute any color of title to any person. (R. C., c. 42, s. 2; Code, s. 2755; 1893, c. 490; Rev., s. 1699; C. S., s. 7545; G. S., s. 146-13; 1959, c. 683, s. 1.)

Editor's Note. — The reference in this section to §§ 146-1 through 146-77 is to those sections as they stood prior to the ratification of Session Laws 1959, c. 683, which revised this Chapter.

In General. — Where there are two or more conflicting titles derived from the State, the elder shall be preferred, upon the familiar maxim that he who is prior in time shall be prior in right and shall be adjudged to have the better title. Berry v. W. M. Ritter Lumber Co., 141 N.C. 386, 54 S.E. 278 (1906).

Under the express provisions of this statute where land in controversy has been previously granted to plaintiff's predecessor in title, a subsequent grant of the same land, under which defendants claimed title, was void for all purposes. Johnston v. Kramer Bros. & Co., 203 F. 733 (E.D.N.C. 1913).

The State's grant of land was held not invalid under this section where land conveyed by the grant had not been covered by any previous grant. Peterson v. Sucro, 101 F.2d 282 (4th Cir. 1939).

State Not Interested in Conflicting Grants. —A protest to the entry raises the issue of title solely between the enterer and protestant, in which the State is not interested, the burden being on the enterer to prove the protestant's grant does not cover the land described in his entry. Walker v. Parker, 169 N.C. 150, 85 S.E. 306 (1915).

Title by Adverse Possession. — Where upon protest to the entry of the State's lands it is ascertained that the lands described in the entry are not contained in the former grant, the protestant may show that the lands are not vacant and unappropriated by sufficient adverse possession to take the title out of the State and vest it in himself. Walker v. Parker, 169 N.C. 150, 85 S.E. 306 (1915).

Title to Lappage by Adverse Possession. — To mature a title under the junior grant, there must be shown adverse and exclusive possession of the lappage, or the law will presume possession to be in the true owner as to all that portion of the lappage not actually occupied by the junior claimant. McLean v. Smith, 106 N.C. 172, 11 S.E. 184 (1890); Boomer v. Gibbs, 114 N.C. 76, 19 S.E. 226 (1894); Currie v. Gilchrist, 147 N.C. 648, 61 S.E. 581 (1908); Blue Ridge Land Co. v. Floyd, 167 N.C. 686, 83 S.E. 687 (1914); Georgia-Carolina Land & Timber Co. v. Potter, 189 N.C. 56, 127 S.E. 343 (1925).

Application to Grants Since March 6, 1893. —This section, providing that a junior grant shall not be color of title so far as it covers land previously granted, applies by its terms only to grants issued since March 6, 1893. Weaver v. Love, 146 N.C. 414, 59 S.E. 1041 (1907); Jones-Onslow Land Co. v. Wooten, 177 N.C. 248, 98 S.E. 706 (1919).

ARTICLE 10.

Surveys.

§ 146-40. Record of surveys to be kept. — The county commissioners of the several counties of the State shall provide a suitable book or books for recording of surveys of entries of land, to be known as Record of Surveys, to be kept in the office of register of deeds as other records are kept. Such record shall have an alphabetical and numerical index, the numerical index to run consecutively. It shall be the duty of every county surveyor or his deputy surveyor who makes a survey to record in such book a perfect and complete record of all surveys of lands made upon any warrant issued upon any entry, and date and sign same as of the date such survey was made. (1905, c. 242; Rev., s. 1722; C. S., s. 7570; G. S., s. 146-39; 1959, c. 683, s. 1.)

Vague Record Not Good Against Junior Enterer. — Prior to this section an entry of the State's vacant and unappropriated lands too vague to give notice of the boundaries of the land intended to be entered was not sufficient notice to a second enterer who had perfected his grant in ignorance of the first; and the mere running of the lines of the lands by survey or the making of a map by the first enterer which he could keep in his possession, or the warrant to the county surveyor, necessarily no more definite then the original entry, did not remedy the defective description of the entry. This section provides for notice of all surveys and such will not hereafter arise. Lovin v. Carver, 150 N.C. 710, 64 S.E. 775 (1911).

§ 146-41. Former surveys recorded. — Where any ex-surveyor of a county is alive and has correct minutes or notes of surveys of land on entries made by him during his term of office, it shall be lawful for him to record and index such survey in the Record of Surveys, and the county commissioners shall pay for such services ten cents (10¢) for each survey so recorded and indexed. (1905, c. 242, s. 2; Rev., s. 1725; C. S., s. 7571; G.S., s. 146-40; 1959, c. 683, s. 1.)

§ 146-42. What record must show; received as evidence. — All surveys so recorded in such book shall show the number of the tract of land, the name of the party entering, and the name of the assignee if there be any assignee; and shall be duly indexed, both alphabetically and numerically, in such record in the name of the party making the entry and in the name of the assignee if there be any assignee. Such record of any surveyor or deputy surveyor when so made shall be read in evidence in any action or proceeding in any court: Provided that if such record differs from the original certificates of survey heretofore made or on file in the office of the Secretary of State, such original or certified copy of the certificate in the Secretary of State's office shall control. (1905, c. 242, ss. 2, 3, 6; Rev., s. 1723; C. S., s. 7572; G.S., s. 146-41; 1959, c. 683, s. 1.)

ARTICLE 11.

Grants.

§ 146-43. Cutting timber on land before obtaining a grant. — If any person shall make an entry of any lands, and before perfecting title to same shall enter upon such lands and cut therefrom any wood, trees, or timber, he shall be guilty of a misdemeanor. Any person found guilty under the provisions of this section shall further pay to the State double the value of the wood, trees, or timber taken from the land, and it shall be the duty of the solicitor of the district in which the land lies to sue for the same. (1903, c. 272, s. 4; Rev., s. 3741; C. S., s. 7582; G. S., s. 146-51; 1959, c. 683, s. 1.)

§ 146-44. Card index system for grants. — The Secretary of State shall install in his office a card index system for grants, and every warrant, plot, and survey that can be found shall be encased in separate envelopes. Each card and envelope shall show substantially the following:

.... County .... Acres
Name ....
Grant No. .... Issued ....
Grant Book .... Page ....
Entry No. .... Entered ....
File No. ....
Location ....
Remarks ....

Such grant books as are old and falling to pieces shall be recopied, and whenever any part of the record of a grant is partly gone or destroyed the Secretary of State shall restore same, if he can do so with accuracy from the description in the plot and survey upon which the grant was issued and original record made. (1909, c. 505, ss. 1, 2, 3; C. S., s. 7584; G. S., s. 146-53; 1959, c. 683, s. 1.)

§ 146-45. Grant of Moore's Creek Battlefield authorized. — In conjunction with an act of Congress relating to the establishment of the Moore's Creek National Military Park (June 2, 1926, c. 448, s. 2, 44 Stat. 684; U. S. Code, Title 16, ss. 422-422(d)), the Governor of the State of North Carolina is hereby authorized to execute to the United States government a deed vesting the title to Moore's Creek Battlefield, Pender County, in said United States government on behalf of the State of North Carolina, to preserve the same as an historical battlefield: Provided that the consent of the State of North Carolina to such acquisition by the United States is upon the express condition that the State of North Carolina shall so far retain a concurrent jurisdiction with the United States over such battlefield as that all civil and criminal processes issued from the courts of the State of North Carolina may be executed thereon in like manner as if this authority had not been given: Provided further, that the title to said battlefield so conveyed to the United States shall revert to the State of North Carolina unless said land is used for the purpose for which it is ceded. (1925, c. 40; 1927, c. 56; G. S., s. 146-54; 1959, c. 683, s. 1.)

ARTICLE 12.

Correction of Grants.

§ 146-46. When grants may issue. — In any case where, under the provisions of this Subchapter, the Secretary of State is authorized to issue a grant or a duplicate grant to correct an error in a prior grant, the grant of correction shall be authenticated by the Governor, countersigned by the Secretary of State, and recorded in the office of the Secretary of State. The date of the entry and the number of the survey from the certificate of survey upon which the grant is founded shall be inserted in every such grant, and a copy of the plot shall be attached to the grant. (1777, c. 114, s. 10, P. R.; 1783, c. 185, s. 14, P. R.; 1796, c. 455, P. R.; 1799, c. 525, s. 2, P. R.; R. C., c. 42, ss. 12, 22; Code, ss. 2769, 2779; 1889, c. 522; Rev., ss. 1729, 1734, 1735; C. S., s. 7578; G. S., s. 146-47; 1959, c. 683, s. 1.)

Grants under State Seal. — A grant without the great seal of the State affixed does not show title under that grant, as it is mandatory that the seal be affixed to authenticate the signature of the Governor and Secretary of State. Howell v. Hurley, 170 N.C. 798, 83 S.E. 699 (1914).

A paper signed by the Governor and countersigned by the Secretary of State, although not bearing the great seal of the State, is admissible in evidence to show title. Howell v. Hurley, 170 N.C. 401, 87 S.E. 107 (1915).

Secretary of State Must Sign. — A grant of land if not signed by the Secretary of State is void. Den on Demise of Hunter v. Williams, 8 N.C. 221 (1820).

Deputy Signing. — It is necessary that the Secretary of State sign the grant, and if he signs it, it is valid no matter if there has been an attempt to sign by one of the deputies. Fowler v. Union Dev. Co., 158 N.C. 48, 73 S.E. 488 (1911).

Place of Signature Immaterial. — It is not necessary that the Secretary of State countersign at any especial place on the grant to make it valid. Richards v. W.M. Ritter Lumber Co., 158 N.C. 54, 73 S.E. 485 (1911).

Secretary of State Must Issue. — Where the claimant has complied with the law, and it appears from the warrant and survey that the entry-taker and surveyor have discharged their duties, the Secretary must issue the grant, and has no discretion in the matter. Wool v. Saunders, 108 N.C. 729, 13 S.E. 294 (1891).

§ 146-47. Change of county line before grant issued or registered. — All grants issued on entries for lands which were entered in one county, and before the issuing of the grants therefor or the registration of the grants, by the change of former county lines or the establishment of new lines, the lands so entered were placed in a county or in counties different from that in which they were situated, and the grants were registered in the county where the entires were made, shall be good and valid, and the registration of the grant shall have the same force and effect as if they had been registered in the county where the lands were situated. All persons claiming under and by such grants may have them, or a certified copy of the same, from the office of the Secretary of State, or from the office of the register of deeds when they had been erroneously registered, recorded in the office of the register of deeds of the county or counties where the lands lie, and such registration shall have the same force and effect as if the grants had been duly registered in such county or counties. (1897, c. 37; Rev., s. 1736; C. S., s. 7585; G. S., s. 146-55; 1959, c. 683, s. 1.)

When the entry and survey are made in one county, the registering of the deed in that county gives good title although a new county may have been organized including the land granted before the grant was registered. McMillan v. Gambill, 106 N.C. 359, 11 S.E. 273 (1890); Wyman v. Taylor, 124 N.C. 426, 32 S.E. 740 (1899).

§ 146-48. Entries in wrong county. — Whereas many citizens of the State, on making entries of lands near the lines of the county wherein they reside, either for want of proper knowledge of the land laws of the State or not knowing the county lines, have frequently made entries and extended their surveys on such entries into other counties than those wherein they were made, and obtained grants on the same; and whereas doubts have existed with respect to the validity of the titles to lands situated as aforesaid, so far as they extend into other counties than those where the entries were made; for remedy whereof it is hereby declared that all grants issued on entries made for lands situated as aforesaid shall be good and valid against any entries thereafter made or grants issued thereon. (1805, c. 675, P. R.; 1834, c. 17; R. C., c. 42, s. 27; Code, s. 2784; Rev., s. 1737; C. S., s. 7586; G. S., s. 146-56; 1959, c. 683, s. 1.)

Earlier statute applied and discussed in Harris v. Norman, 96 N.C. 59, 2 S.E. 72 (1887). See Avery v. Strother, 1 N.C. 496 (1802); Lunsford v. Bostion, 16 N.C. 483 (1830).

§ 146-49. Errors in surveys of plots corrected. — Whenever there may be an error by the surveyor in plotting or making out the certificate for the Secretary's office, or whenever the Secretary shall make a mistake in making out the courses agreeable to such returns, or misname the claimant, or make other mistake, so that such claimant shall be injured thereby, the claimant may prefer a petition to the superior court of the county in which the land lies, setting forth the injury which he might sustain in consequence of such error or mistake, with all the matters and things relative thereto. The court may hear testimony respecting the truth of the allegations set forth in the petition; and if it shall appear by the testimony, from the return of the surveyor or the error of the Secretary, that the patentee is liable to be injured thereby, the court shall direct the clerk to certify the facts to the Secretary of State, who shall file the same in his office, and correct the error in the patent, and likewise in the records of his office. The costs of such suit shall be paid by the petitioner, except when any person may have made himself a party to prevent the prayer of the petitioner being granted, in which case the costs shall be paid as the court may decree. The benefits granted by this section to the patentees of land shall be extended in all cases to persons claiming by, from, or under their grants, by descent, devise, or purchase. When any error is ordered to be rectified, and the same has been carried through from the grant into mesne conveyances, the court shall direct a copy of the order to be recorded in the register's book of the county: Provided no such petition shall be brought but within three years after the date of the patent; and if brought after that time, the court shall dismiss the same, and all proceedings had thereon shall be null and of no effect: Provided further, nothing herein shall affect the rights or interest of any person claiming under a patent issued between the period of the date of the grant alleged to be erroneous and the time of filing the petition, unless such person shall have had due notice of the filing of the petition, by service of a copy thereof, and an opportunity of defending his rights before the court according to the course of the common law. (1790, c. 326, P. R.; 1798, c. 504, P. R.; 1804, c. 655, P. R.; 1814, c. 876, P. R.; R. C., c. 42, s. 28; Code, s. 2785; Rev., s. 1738; C. S., s. 7587; G. S., s. 146-57; 1959, c. 683, s. 1.)

§ 146-50. Resurvey of lands to correct grants. — Persons who have entered vacant lands shall not be defeated in their just claims by mistakes or errors in the surveys and plots furnished by surveyors. In every case where the purchase money has been paid into the State treasury within the time prescribed by law after entry, and the survey or plot furnished shall be found to be defective or erroneous, the party having thus made entry and paid the purchase price may obtain another warrant of survey from the register of deeds of the county where the land lies, and have his entry surveyed as is directed by existing laws. On presenting a certificate of survey and two fair plots thereof to the Secretary of State within six months after the payment of the purchase money, the party making such entry and paying such purchase price shall be entitled to receive, and it shall be the duty of the Secretary of State to issue to him, the proper grant for the lands so entered. (1901, c. 734; Rev., s. 1739; C. S., s. 7588; G. S., s. 146-58; 1959, c. 683, s. 1.)

§ 146-51. Lost seal replaced. — In all cases where the seal annexed to a grant is lost or destroyed, the Governor may, on the certificate of the Secretary of State that the grant was fairly obtained, cause the seal of the State to be affixed thereto. (1807, c. 727, P. R.; R. C., c. 42, s. 24; Code, s. 2781; Rev., s. 1740; C. S., s. 7589; G. S., s. 146-59; 1959, c. 683, s. 1.)

§ 146-52. Errors in grants corrected. — If in issuing any grant the number of the grant or the name of the grantee or any material words or figures suggested by the context have been omitted or not correctly written or given, or the description in the body of the grant does not correspond with the plot and description in the surveyor's certificate attached to the grant, or if in recording the grant in his office the Secretary of State has heretofore made or may hereafter make any mistake or omission by which any part of any grant has not been correctly recorded, the Secretary of State shall, upon the application of any party interested and the payment to him of his lawful fees, correct the original grant by inserting in the proper place the words, figures, or names omitted or not correctly given or suggested by the context; or if the description in the grant does not correspond with the surveyor's plot or certificate, the Secretary of State shall make the former correspond with the latter as the true facts may require. In case the party interested shall prefer it, the Secretary of State shall issue a duplicate of the original grant, including therein the corrections made; and in those cases in which grants have not been correctly recorded, he shall make the proper corrections upon his records, or by rerecording, as he may prefer; and any grant corrected as aforesaid may be recorded in any county of the State as other grants are recorded, and have relation to the time of the entry and date of the grant as in other cases. (1889, c. 460; Rev., s. 1741; C. S., s. 7590; G. S., s. 146-60; 1959, c. 683, s. 1.)

Power to Correct Errors Not Judicial. — The power conferred upon the Secretary of State to correct errors in grants of State's land, by supplying omissions, or correcting the names of grantees, material words or figures, etc., confers on him only a ministerial authority and not a judicial power. Herbert v. Union Dev. Co., 179 N.C. 662, 103 S.E. 380 (1920).

§ 146-53. Irregular entries validated. — Wherever persons have, prior to January 1, 1883, irregularly entered lands and have paid the fees required by law to the Secretary of State, and have obtained grants for such lands duly executed, the title to the lands shall not be affected by reason of such irregular entries; and the grants are hereby declared to be as valid as if such entries had been properly made. (1868-9, c. 100, s. 4; c. 173, s. 6; 1874-5, c. 48; Code, s. 2761; Rev., s. 1743; C. S., s. 7591; G. S., s. 146-61; 1959, c. 683, s. 1.)

Section Cures Irregularities. — irregularities in receiving grants from the State are cured by this section. Wyman v. Taylor, 124 N.C. 426, 32 S.E. 740 (1899).

§ 146-54. Grant signed by deputy Secretary of State validated. — Where State grants have heretofore been issued and the name of the Secretary of State has been affixed thereto by his deputy or chief clerk, or by anyone purporting to act in such capacity, such grants are hereby declared valid; but nothing herein contained shall interfere with vested rights. (1905, c. 512; Rev., s. 1744; C. S., s. 7592; G. S., s. 146-62; 1959, c. 683, s. 1.)

This section does not interfere with vested rights, and therefore a grant countersigned by a clerk is not valid if it conflicts with a prior grant, but is valid as between the State and the grantee, if there was no prior grant. Richards v. W.M. Ritter Lumber Co., 158 N.C. 54, 73 S.E. 485 (1911).

§ 146-55. Registration of grants. — Every person obtaining a grant shall, within two years after such grant is perfected, cause the same to be registered in the county where the land lies; and any person may cause to be there registered any certified copy of a grant from the office of the Secretary of State, which shall have the same effect as if the original had been registered. (1783, c. 185, s. 14, P. R.; 1796, c. 455, P. R.; 1799, c. 525, s. 2, P. R.; R. S., c. 42, s. 24; R. C., c. 42, s. 22; Code, s. 2779; Rev., s. 1729; C. S., s. 7579; G. S., s. 146-48; 1959, c. 683, s. 1.)

Sufficient Evidence for Registration. — The certificate of the Secretary of State of North Carolina, attached to a grant of land and attested by the great seal of the State, is sufficient evidence of its official character to warrant its registration without further proof. Ray v. Stewart, 105 N.C. 472, 11 S.E. 182 (1890); Barcello v. Hapgood, 118 N.C. 712, 24 S.E. 124 (1896); Wyman v. Taylor, 124 N.C. 426, 32 S.E. 740 (1899).

Extension of Time for Registration. — "Prior to 1885 the statutes provided that all grants, deeds, etc., be registered in the county wherein the land was situated within two years from the date thereof. With one or two omissions, the legislature uniformly extended the time for registration for two years. The Supreme Court with equal uniformity held that such instruments, when registered within two years from their date or within the extended period, were good and valid for all purposes from their date by relation." Janney v. Blackwell, 138 N.C. 437, 50 S.E. 857 (1905).

§ 146-56. Time for registering grants extended. — All grants from the State of North Carolina of lands and interests in land heretofore made, which were required or allowed to be registered within a time specified by law, or in the grants themselves, may be registered in the counties in which the lands lie respectively at any time within six years from January 1, 1918, notwithstanding the fact that such specified time has already expired, and all such grants heretofore registered after the expiration of such specified time shall be taken and treated as if they had been registered within such specified time: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1893, c. 40; 1901, c. 175; 1905, c. 6; Rev., s. 1747; 1907, c. 805; 1909, c. 167; 1911, c. 182; Ex. Sess. 1913, cc. 27, 45; 1915, c. 170; 1917, c. 84; C. S., s. 7593; Ex. Sess. 1920, c. 78; 1921, c. 153; G. S., s. 146-63; 1959, c. 683, s. 1.)

Registration against Junior Grant. — Where neither party has possession, the senior grant is valid against a junior grant duly recorded no matter how long registration may have been delayed by senior grantee. Janney v. Blackwell, 138 N.C. 437, 50 S.E. 857 (1905).

It is not necessary that a grant from the State be registered to make it valid. The retroactive statutes making grants registered after the times prescribed valid, gives good title against a junior grant duly recorded. Dew v. Pyke, 145 N.C. 300, 59 S.E. 76 (1907).

§ 146-57. Time for registering grants and other instruments extended. — The time is hereby extended until September 1, 1926, for the proving and registering of all deeds of gift, grants from the State, or other instruments of writing heretofore executed and which are permitted or required by law to be registered, and which were or are required to be proved and registered within a limited time from the date of their execution; and all such instruments which have heretofore been or may be probated and registered before the expiration of the period herein limited shall be held and deemed, from and after the date of such registration, to have been probated and registered in due time, if proved in due form, and registration thereof be in other respects valid: Provided that nothing in this section shall be held or deemed to validate or attempt to validate or give effect to any informal instrument; and provided further that this section shall not affect pending litigation: Provided further that nothing herein contained shall be held deemed to place any limitation upon the time allowed for the registration of any instrument where no such limit is now fixed by law. (Ex. Sess. 1924, c. 20; G. S., s. 146-64; 1959, c. 683, s. 1.)

Effect on § 47-26. — Where a mother has made a deed of gift of her lands to her son, who has failed to have it registered in the time required by § 47-26, and it is for that reason void, a latter curative statute extending the time for registration cannot revive the void deed to the son. Under the facts, vested rights thereunder have been acquired. Booth v. Hairston, 193 N.C. 278, 136 S.E. 879, 57 A.L.R. 1186 (1927); (rehearing) 195 N.C. 8, 141 S.E. 480 (1928).

§ 146-58. Time for registering grants further extended. — The time for the registration of grants issued by the State of North Carolina is hereby extended for a period of two years from January 1, 1925: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants, or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1925, c. 97; G. S., s. 146-65; 1959, c. 683, s. 1.)

§ 146-59. Time for registering grants or copies extended. — The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from January 1, 1927, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them, acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1927, c. 140; G. S., s. 146-66; 1959, c. 683, s. 1.)

§ 146-60. Further extension of time for registering grants or copies for two years from January 1, 1947. — The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of two years from January 1, 1947, next ensuing, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1947, c. 99; G. S., s. 146-66.1; 1959, c. 683, s. 1.)

§ 146-60.1. Further extension of time for registering grants or copies for four years from January 1, 1977. — The time for the registration of grants issued by the State of North Carolina, or copies of such grants duly certified by the Secretary of State under his official seal, be and the same hereby is extended for a period of four years from January 1, 1977, and such grants or copies thereof duly certified as above set forth may be registered within such time as fully as the original might have been registered at any time heretofore: Provided that nothing herein contained shall be held or have the effect to divest any rights, titles, or equities in or to the land covered by such grants or any of them acquired by any person from the State of North Carolina by or through any entry or grant made or issued since such grants were respectively issued, or those claiming through or under such subsequent entry or grant. (1977, c. 701.)

ARTICLE 13.

Grants Vacated.

§ 146-61. Civil action to vacate grant. — When any person claiming title to lands under a grant or patent from the King of Great Britain, any of the lords proprietors of North Carolina, or from the State of North Carolina, shall consider himself aggrieved by any grant or patent issued or made since July 4, 1776, to any other person, against law or obtained by false suggestions, surprise, or fraud, the person aggrieved may bring a civil action in the superior court for the county in which such land may be, together with an authenticated copy of such grant or patent, briefly stating the grounds whereon such patent should be repealed and vacated, whereupon the grantee, patentee, or the person, owner, or claimant under such grant or patent, shall be required to show cause why the same shall not be repealed and vacated. (R. C., c. 42, s. 29; Code, s. 2786; Rev., s. 1748; C. S., s. 7594; G. S., s. 146-67; 1959, c. 683, s. 1.)

Collateral Attack on Grant. — If the land be not subject to entry, the grant is void, and may be attacked collaterally. Janney v. Blackwell, 138 N.C. 437, 50 S.E. 857 (1905).

Plaintiff Must Claim an Interest in Land. —An action cannot be had under this section unless it is made to appear that the plaintiff has an interest in the land claimed by the defendant. State ex rel. Jones v. Riggs, 154 N.C. 281, 70 S.E. 465 (1911); Wadsworth v. Cozad, 175 N.C. 15, 94 S.E. 670 (1917).

Where the State has no interest in the land, an action to vacate a grant must be brought by the party in interest in his own name and at his own expense. State ex rel. Attorney Gen. v. Bland, 123 N.C. 739, 31 S.E. 475 (1898).

Fraud Practiced on the State. — A grant cannot be set aside at the suit of a junior grantee on the ground of fraud practiced on the State. Henry v. McCoy, 131 N.C. 586, 42 S.E. 955 (1902).

Action Where Land in Several Counties. — When it appears in an action for the cancellation of several grants, some of which were issued in a different county from that wherein the action was brought, that the allegation of fraud and false suggestion involves one and the same transaction, affecting each and all the grants, the subject of the litigation, it is unnecessary to bring a separate action in respect to the grants issued in the other county, some of the lands, the subject of the action, lying in the county wherein the action was brought. Kanawha Hardwood Co. v. Waldo, 161 N.C. 196, 76 S.E. 680 (1912).

Only Means of Attacking Grants. — It is well settled that a grant can only be vacated by proceedings under the statute (former §§ 146-67 to 146-69). Crow v. Holland, 15 N.C. 417 (1834); McNamee v. Alexander, 109 N.C. 242, 13 S.E. 777 (1891); Kimsey v. Munday, 112 N.C. 816, 17 S.E. 583 (1893).

§ 146-62. Judgment recorded in Secretary of State's office. — If, upon verdict or demurrer, the court believe that the patent or grant was made against law or obtained by fraud, surprise, or upon untrue suggestions, it may vacate the same; and a copy of such judgment, after being recorded at large, shall be filed by the petitioner in the Secretary of State's office, where it shall be recorded in a book kept for that purpose; and the Secretary shall note in the margin of the original record of the grant the entry of the judgment, with a reference to the record in his office. (R. C., c. 42, s. 30; Code, s. 2787; Rev., s. 1749; C. S., s. 7595; G. S., s. 146-68; 1959, c. 683, s. 1.)

§ 146-63. Action by State to vacate grants. — An action may be brought by the Attorney General in the name of the State for the purpose of vacating or annulling letters patent granted by the State, in the following cases:

(1) When he has reason to believe that such letters patent were obtained by means of some fraudulent suggestion or concealment of a material fact, made by the person to whom the same were issued or made, or with his consent or knowledge; or

(2) When he has reason to believe that such letters patent were issued through mistake, or in ignorance of a material fact; or

(3) When he has reason to believe that the patentee, or those claiming under him, have done or omitted an act in violation of the terms and conditions on which the letters patent were granted, or have by any other means forfeited the interest acquired under the same. (C. C. P., s. 367; Code, s. 2788; Rev., s. 1750; C. S., s. 7596; G. S., s. 146-69; 1959, c. 683, s. 1.)

Editor's Note. — For note on defining navigable waters and the application of the public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

State Must Be a Party Interested. — The State can only bring action under this section to vacate a grant when title would vest in the State upon cancellation of the grant. State ex rel. Attorney Gen. v. Bland, 123 N.C. 739, 31 S.E. 475 (1898).

Attorney General Must Bring Action. — The right to bring action to set aside a grant because of fraud practiced on the State must be brought by the Attorney General in the name of the State, and cannot be brought by any other person. Henry v. McCoy, 131 N.C. 586, 42 S.E. 955 (1902); Jones v. Riggs, 154 N.C. 281, 70 S.E. 465 (1911).

Grounds for Vacating. — Where a grant has been in strict compliance with the law, rights of property have been acquired which cannot be taken away, even by the State, in the absence of an allegation of fraud or mistake, except after compensation and under the principle of eminent domain. State ex rel. Blount v. Spencer, 114 N.C. 770, 19 S.E. 93 (1894).

Applicable Only to Land Grants. — A license to sell liquor is not a letter patent to be vacated by quo warranto under this section. Hargett v. Bell, 134 N.C. 394, 46 S.E. 749 (1904).

Proceeding by the Attorney General to vacate a charter of a corporation cannot be brought under this section, or because of any authority vested by this section, but must be brought under Chapter 55. Attorney Gen. v. Holly Shelter R.R., 134 N.C. 481, 46 S.E. 959 (1904).

SUBCHAPTER IV. MISCELLANEOUS.

ARTICLE 14.

General Provisions.

§ 146-64. Definitions. — As used in this Chapter:

(1) "Acquired lands" means all State lands, title to which has been acquired by the State or by any State agency by purchase, devise, gift, condemnation, or adverse possession.

(2) "Escheated lands" means all State lands, title to which has been acquired by escheat.

(3) "Land" means real property, buildings, space in buildings, timber rights, mineral rights, rights-of-way, easements, options, and all other rights, estates, and interests in real property.

(4) "Navigable waters" means all waters which are navigable in fact.

(5) "State agency" includes every agency, institution, board, commission, bureau, council, department, division, officer, and employee of the State, but does not include counties, municipal corporations, political subdivisions of the State, county or city boards of education, or other local public bodies. The term "State agency" does not include any private corporation created by act of the General Assembly. In case of doubt as to whether a particular agency, corporation, or institution is a State agency for the purposes of this Chapter, the Attorney General, upon request of the Governor and Council of State, shall make a determination of the issue. Upon a finding by the Attorney General that an agency, corporation, or institution is not a State agency for the purpose of this Chapter, the Governor and Council of State may execute a deed or other appropriate instrument releasing and quitclaiming all title and interest of the State in the lands of that agency, corporation, or institution.

(6) "State lands" means all land and interests therein, title to which is vested in the State of North Carolina, or in any State agency, or in the State to the use of any agency, and specifically includes all vacant and unappropriated lands, swamplands, submerged lands, lands acquired by the State by virtue of being sold for taxes, escheated lands, and acquired lands.

(7) "Submerged lands" means State lands which lie beneath

a. Any navigable waters within the boundaries of this State, or

b. The Atlantic Ocean to a distance of three geographical miles seaward from the coastline of this State.

(8) "Swamplands" means lands too wet for cultivation except by drainage, and includes
  a. All State lands which have been or are known as "swamp" or "marsh" lands, "pocosin bay" "briary bay" or "savanna," and which are a part of one swamp exceeding 2,000 acres in area, or which are a part of one swamp 2,000 acres or less in area which has been surveyed by the State; and
  b. All State lands which are covered by the waters of any state-owned lake or pond.

(9) "Vacant and unappropriated lands" means all State lands title to which is vested in the State as sovereign, and land acquired by the State by virtue of being sold for taxes, except swamplands as hereinafter defined. (1854-5, c. 21; R. C., c. 42, s. 1; Code, s. 2751; 1891, c. 302; Rev., ss. 1693, 1695; C. S., ss. 7540, 7542; G. S., ss. 146-1, 146-4; 1959, c. 683, s. 1; 1969, c. 1164.)

Editor's Note. — For note on defining navigable waters and the application of the public trust doctrine in North Carolina, see 49 N.C.L. Rev. 888 (1971).

Effect of Grant. — Lands once granted by the State to individual citizens do not become "vacant lands" within the meaning of the statute, where the State subsequently acquires title to them but abandons the actual use to which they were put. State v. Bevers, 86 N.C. 588 (1882).

Swamplands, within the meaning of this section are those too wet for cultivation except by drainage. Beer v. Whiteville Lumber Co., 170 N.C. 337, 86 S.E. 1024 (1915).

Swamplands of two creeks may be separate and not subject to the same application of this section though it appears that sometimes during freshets and high water these are all covered with one sheet of water. Beer v. Whiteville Lumber Co., 170 N.C. 337, 86 S.E. 1024 (1915).

A tract of land within the area of swamplands coming within the meaning of this section need not necessarily be free from knolls or higher and drier places. State Board of Educ. v. Roanoke R. R. & Lumber Co., 158 N.C. 313, 73 S.E. 994 (1912).

Tract Held Not Swampland. — See Resort Dev. Co. v. Parmele, 235 N.C. 689, 71 S.E.2d 474 (1952).

Tidelands. — The fact that tidelands conveyed by the State Board of Education are thereafter filled in and reclaimed by the purchaser does not divest the title of the purchaser, since the conveyance is of the fee and not an easement in the lands. Home Real Estate Loan & Ins. Co. v. Parmele, 214 N.C. 63, 197 S.E. 714 (1938).

Ownership of Foreshore Remains in State. — There is nothing in this section or § 146-3 to change the general rule that ownership of the foreshore remains in the State. On the contrary, it is noteworthy that a special class was created for the protection of the foreshore and the marginal seas. Therefore, littoral rights do not include ownership of the foreshore. Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach, 277 N.C. 297, 177 S.E.2d 513 (1970).

Grant of Land under Navigable Waters Void in Absence of Specific Authority. — In the absence of specific authority from the legislature, the State at no time had the power to grant land under navigable waters and all of such grants are void. Swan Island Club, Inc. v. White, 114 F. Supp. 95 (E.D.N.C. 1953), aff'd, 209 F.2d 698 (4th Cir. 1954).

Watercourses Navigable in Fact Are Navigable in Law. — The present North Carolina law as to navigable waters is that all watercourses are regarded as navigable in law that are navigable in fact. Swan Island Club, Inc. v. White, 114 F. Supp. 95 (E.D.N.C. 1953), aff'd, 209 F.2d 698 (4th Cir. 1954).

Grant Impeding Navigation. — In respect to navigable waters the State has no right to grant or convey the land under such waters for any purpose which will destroy or materially impede the use of such waters for navigation. Home Real Estate Loan & Ins. Co. v. Parmele, 214 N.C. 63, 197 S.E. 714 (1938).

Governor Not Authorized to Agree to Boundary Line over Land under Navigable Waters. — The Governor of North Carolina was without authority in 1927 to agree as to a private owner's boundary line over lands under navigable waters, as this section at the time prohibited the grant of or entry upon such lands. Swan Island Club, Inc. v. White, 114 F. Supp. 95 (E.D.N.C. 1953), aff'd, 209 F.2d 698 (4th Cir. 1954).

Decrees in Torrens Proceeding Adjudging Ownership in Land under Navigable Water. — Insofar as a decree in a Torrens proceeding adjudged the plaintiff the owner in fee of shoal lands under navigable water, it transcended the power of the court under the law, and, therefore, is open to collateral attack. Swan Island Club, Inc. v. White, 114 F. Supp. 95 (E.D.N.C. 1953), aff'd, 209 F.2d 698 (4th Cir. 1954).

Grants to Land Not Subject to Entry. — An entry made to swampland when the body contains more than 2,000 acres is void, and a grant under such entry is void. State Board of Educ. v. Roanoke R.R. & Lumber Co., 158 N.C. 313, 73 S.E. 994 (1912). See Home Real Estate Loan & Ins. Co. v. Parmele, 214 N.C. 63, 197 S.E. 714 (1938).

§ 146-65. Exemptions from Chapter. — None of the provisions of Chapter 146 shall apply to:

(1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation; or

(2) The North Carolina State Ports Authority, the authority and powers thereof set forth or provided for by GS. 143-216 through G.S. 143-228.1 or to the exercise of all or any of such authority and powers,

Nor shall the provisions of Chapter 146 abrogate or alter any otherwise valid contract or agreement heretofore made and entered into by the State of North Carolina or by any of its subdivisions or agencies during the term or period of such contract or agreement. (1957, c. 584, s. 6; G.S., s. 146-112; 1959, c. 683, s. 1; 1973, c. 507, s. 5.)

Editor's Note. — Sections 143-216 through 143-228.1, referred to in subdivision (2), were recodified as §§ 143B-452 to 143B-467 by Session Laws 1977, c. 198, s. 9.

§ 146-66. Voidability of transactions contrary to Chapter. — Any sale, lease, rental, or other disposition of State lands or of any interest or right therein, made or entered into contrary to the provisions of this Chapter, shall be voidable in the discretion of the Governor and Council of State. (1957, c. 584, s. 6; G.S., s. 146-111; 1959, c. 683, s. 1.)

§ 146-67. Governor to employ persons. — The Governor may employ persons to perform such services as may be necessary to carry out the provisions of this Chapter, and he shall fix the compensation to be paid for such services. All expenditures for such services shall be paid from the State Land Fund on order of the Director of the Budget, or the officer designated by him to issue such orders. (1959, c. 683, s. 1.)

§ 146-68. Statutes of limitation. — The provisions of G.S. 1-35, 1-36, and 1-37 are made applicable to this Chapter. (1959, c. 683, s. 1.)

§ 146-69. Service on State in land actions. — In all actions and special proceedings brought by or against the State or any State agency with respect to State land or any interest therein, service of process upon the Secretary of Administration, with delivery to him of copies for the Attorney General and for the administrative head of each State agency known by the party in whose behalf service is made to have an interest in the land which is the subject of the action or proceeding, shall constitute service upon the State for all purposes. (1959, c. 683, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" near the middle of the section.

§ 146-70. Institution of land actions by the State. — Every action or special proceeding in behalf of the State or any State agency with respect to State lands or any interest therein, or with respect to land being condemned by the State, shall be brought by the Attorney General in the name of the State, upon the complaint of the Secretary of Administration. (1959, c. 683, s. 1; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment substituted "Secretary" for "Director" near the end of the section.

Quoted in State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

ARTICLE 15.

State Land Fund.

§ 146-71. State Land Fund created. — The State Land Fund, which is hereby created, shall consist of the moneys required by this Chapter to be paid into that fund, together with such amounts as the General Assembly may appropriate thereto. (1959, c. 683, s. 1.)

§ 146-72. Purpose. — The State Land Fund may, in accordance with rules and regulations adopted by the Governor and approved by the Council of State, be used for the following purposes:

(1) To pay any expenses incurred in carrying out the duties and responsibilities created by the provisions of this Chapter.

(2) For the acquisition of land, when appropriation is made for that purpose by the General Assembly. (1959, c. 683, s. 1.)

§ 146-73. Administration. — The State Land Fund shall be administered by the Department of Administration, in accordance with rules and regulations adopted by the Governor and approved by the Council of State. All expenditures from the fund shall be made upon order of the Director of the Budget, or of the officer designated by him to issue such orders. (1959, c. 683, s. 1.)

ARTICLE 16.

Form of Conveyances.

§ 146-74. Approval of conveyances. — Every proposed conveyance in fee of State lands shall be submitted to the Governor and Council of State for their approval. Upon approval of the proposed conveyance in fee by the Governor and Council of State, a deed for the land being conveyed shall be executed in the manner prescribed in this article. (1957, c. 584, s. 7; G. S., s. 143-147; 1959, c. 683, s. 1.)

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

§ 146-75. Execution; signature; attestation; seal. — Each such conveyance in fee shall be in the usual form of deeds of conveyance of real property and shall be executed in the name of the State of North Carolina, signed in the name of the State by the Governor, and attested by the Secretary of State; and the great seal of the State of North Carolina shall be affixed thereto. (1929, c. 143, s. 2; G. S., s. 143-148; 1959, c. 683, s. 1.)

§ 146-76. Exclusive method of conveying State lands. — The manner and method of conveying State lands herein set out shall be the exclusive and only method of conveying State lands in fee. Any conveyance thereof by any other person or executed in any other manner or by any other method shall not be effective to convey the interest or estate of the State in such land. (1929, c. 143, s. 4; G. S., s. 143-150; 1959, c. 683, s. 1.)

§ 146-77. Admission to registration in counties. — Each such conveyance shall be admitted to registration in the several counties of the State upon the probate required by law for deeds of corporations. (1929, c. 143, s. 3; G. S., s. 143-149; 1959, c. 683, s. 1.)

§ 146-78. Validation of conveyances of state-owned lands. — All conveyances heretofore made by the Governor, attested by the Secretary of State, and authorized by the Council of State, in the manner provided by G. S. 146-74 and 146-75 of any lands, the title to which was vested in the State for the use of any State institution, department, or agency, or vested in the State for any other purpose, are hereby ratified and validated. (1917, c. 129; C. S., s. 7524; 1951, c. 18; 1957, c. 584, s. 7; G. S., s. 143-146; 1959, c. 683, s. 1.)

Stated in Lewis v. White, 287 N.C. 625, 216 S.E.2d 134 (1975).

ARTICLE 17.

Title in State.

§ 146-79. Title presumed in the State; tax titles. — In all controversies and suits for any land to which the State or any State agency or its assigns shall be a party, the title to such lands shall be taken and deemed to be in the State or the State agency or its assigns until the other party shall show that he has a good and valid title to such lands in himself.

In all controversies touching the title or the right of possession of any lands claimed by the State or by any State agency under any sale for taxes at any time heretofore made or which hereafter may be made, the deed of conveyance made by the sheriff or other officer or person making such sale, or who may have been authorized to execute such deed, shall be presumptive evidence that the lands therein mentioned were, at the time the lien for such taxes attached and at the time of the sale, the property of the person therein designated as the delinquent owner; that such lands were subject to taxation; that the taxes were duly levied and assessed; that the lands were duly listed; that the taxes were due and unpaid; that the manner in which the listing, assessment, levy, and sale were conducted was in all respects as the law directed; that all the prerequisites of the law were duly complied with by all officers or persons who had or whose duty it was to have had any part or action in any transaction relating to or affecting the title conveyed or purported to be conveyed by the deed, from the listing and valuation of the property up to the execution of the deed, both inclusive; and that all things whatsoever required by law to make a good and valid sale and vest the title in the purchaser were done, and that all recitals in such deed contained are true as to each and every of the matters so recited.

In all controversies and suits involving the title to real property claimed and held under and by virtue of a deed made substantially as above, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat such title, either that the real property was not subject to taxation for the year or years named in the deed, that the taxes had been paid before the sale, that the property had been redeemed from the sale according to the provisions of law, and that such redemption was had or made for the use or benefit of persons having the right of redemption under the laws of this State, or that there had been an entire omission to list or assess the property or to levy the taxes or to sell the property; but no person shall be permitted to question the title acquired under such sale and deed without first showing that he or the person under whom he claims title had title to the property at the time of the sale, and that all taxes due upon the property have been paid by such person or the person under whom he claims title. (1842-3, c. 36, s. 3; R. C., c. 66, s. 24; Code, s. 2527; 1889, c. 243; Rev., s. 4047; C. S., s. 7617; G. S., s. 146-90; 1959, c. 683, s. 1.)

This section is not affected by the Real Property Marketable Title Act, § 47B-1 et seq. Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567 (1976).

This section does not authorize a "taking" of property. State v. Chadwick, 31 N.C. App. 398, 229 S.E.2d 255 (1976).

In Action by State Title Is Taken to Be in State. — In an action instituted by the State of North Carolina to remove cloud on title to a tract of coastal marshland title to the lands in controversy shall be taken to be in the State unless and until the other party shall show that he has a good and valid title to such lands in himself. State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

Under former § 146-90, when it was shown that land was swampland and within a swamp of more than 2,000 acres, the law presumed that the Board of Education was the owner thereof. State Bd. of Educ. v. Makely, 139 N.C. 31, 51 S.E. 784 (1905); State Bd. of Educ. v. Roanoke R.R. & Lumber Co., 158 N.C. 313, 73 S.E. 994 (1912).

The presumption created by this section in favor of the State was enacted to avoid undesirable and chaotic consequences which would result if title to the subject land were in limbo. Taylor v. Johnston, 289 N.C. 690, 224 S.E.2d 567 (1976).

The presumption of title in the State lasts only until the rival claimant establishes valid title in himself. State v. Chadwick, 31 N.C. App. 398, 229 S.E.2d 255 (1976).

Defendants must carry the burden of proof by showing a connected chain of title from the sovereign to them for the identical lands claimed by them. State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

In suits for land in which the State or a State agency is a party, the burden of proof is on the party seeking to prove title against the State. Taylor v. Johnston, 27 N.C. App. 186, 218 S.E.2d 500, cert. granted, 288 N.C. 734, 220 S.E.2d 622 (1975).

And Failure to Meet Burden Vests Title in State. — Where defendants failed to show they had a good and valid title to the subject land in themselves, and the identity and location of the subject land having been established by stipulation, as between the State of North Carolina and defendants, this section vested title in the State, and the court erred in submitting the issue to the jury, the question for decision being a matter of law for the court. State v. Brooks, 279 N.C. 45, 181 S.E.2d 553 (1971).

Presumption Rebuttable. — The presumption of title lasts only until good title is shown to be in another party. New Hanover Shingle Mills Co. v. John L. Roper Lumber Co., 178 N.C. 221, 100 S.E. 332 (1919).

Effect of Presumption as to Title on Interpretation of Deed. — The description "to the high watermark" of nonnavigable arm of the sea, a broad shallow sound, restricted or limited conveyance to correctly located line of mean high water as indicated on the ground, particularly where title to marshlands was at time lots were laid off held by State subject to disposition by State Board of Education, since under former § 146-90 title to swamplands was presumed to be in Board or its assignees until a valid title to such land was shown otherwise. Kelly v. King, 225 N.C. 709, 36 S.E.2d 220 (1945)

Presumption That Officers Do Their Duty. —It is entirely proper and competent for the State to provide that the presumption that public officials have done their duty should apply, and throw upon any adverse claimant the burden of proving the contrary. This decision does not, in any way, conflict with the cases of King v. Cooper, 128 N.C. 347, 38 S.E. 924 (1901); Matthews v. Fry, 141 N.C. 582, 54 S.E. 379 (1906); Warren v. Williford, 148 N.C. 474, 62 S.E. 697 (1908), and Rexford v. Phillips, 159 N.C. 213, 74 S.E. 337 (1912), the facts in those cases and this one being very different. State Bd. of Educ. v. Remick, 160 N.C. 562, 76 S.E. 627 (1912).

§ 146-80. Statute of limitations. — No statute of limitations shall affect the title or mar the action of the State, or of any State agency, or of its assigns, unless the same would protect the person holding and claiming adversely against the State. Neither the State nor any State agency, nor its assigns, shall commence any action for the recovery of damages for timber cut and removed from lands owned by the State or by any State agency or for any other act of trespass committed on such lands, more than 10 years after the occurrence of such cutting, removal, or other act of trespass. The provisions of this section shall not have the effect of reviving any cause of action which was, at the date of ratification of this Chapter, barred by any applicable statute of limitations. (1842, c. 36, s. 5; R. C., c. 66, s. 25; Code, s. 2528; Rev., s. 4048; 1917, c. 287; C. S., s. 7618; G. S., s. 146-91; 1959, c. 683, s. 1.)

Editor's Note. — Tillery v. Whiteville Lumber Co., 172 N.C. 296, 90 S.E. 196 (1916) laid down the rule that this statute was not intended to protect an assignee of the State against the three-year statute of limitations when the action was for damage to timber. By amendment in

1917 the part of the section now contained in the second sentence was added.

The purpose of this section was to make applicable to the State Board of Education the same limitations applicable to the State, and the words "or its assigns" were intended to make applicable to assigns of the Board the same limitations applicable to the Board, but only as applied to adverse possession had while title was in the Board. Virginia-Carolina Tie & Wood Co. v. Dunbar, 106 F.2d 383 (4th Cir. 1939).

Board of Education Not Barred by Statute of Limitations — In an action for land brought by the State Board of Education, the plaintiff is not barred by the statute of limitations, which does not run in such cases, unless the State would have been barred by adverse possession. State Bd. of Educ. v. Roanoke R.R. & Lumber Co., 158 N.C. 313, 73 S.E. 994 (1912).

Harmless Error. — In action for damages for alleged trespass in the cutting of timber on swampland where defendants claimed adverse possession under color of title of land in dispute, and plaintiff claimed title under deeds executed by the State Board of Education to a third party, error, if any, in charging that the 7-year statute of limitations, rather than the 21-year statute, was applicable was harmless to plaintiff where, under defendants' evidence, jury could not have found that defendants and those under whom defendants claimed had been in possession for 7 years without finding that they had been in possession for more than 21 years. Virginia-Carolina Tie & Wood Co. v. Dunbar, 106 F.2d 383 (4th Cir. 1939).

§ 146-81. Title to lands sold for taxes. — The title to all land acquired by the State by virtue of being sold for taxes is hereby vested in the State of North Carolina. (1917, c. 209; C. S., s. 7615; G. S., s. 146-88; 1959, c. 683, s. 1.)

§ 146-82. Protection of interest in lands sold for taxes. — Whenever any lands in which the State of North Carolina or any State agency has an interest, by way of mortgage or otherwise, are advertised to be sold for any taxes or special assessment, or under any lien, the Department of Administration is authorized, if in its judgment it is necessary to protect the interest of the State, to appear at any sale of such lands and to buy the same as any other person would. For the purpose of paying therefor, the Director of the Budget is authorized to draw upon the State Land Fund. (1917, c. 246; C. S., s. 7616; G. S., s. 146-89; 1959, c. 683, s. 1.)

ARTICLE 18.

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State Officers.

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ARTICLE 1.

Classification and General Provisions.

§ 147-1. Public State officials classified. — The public officers of the State are legislative, executive, and judicial. But this classification shall not be construed as defining the legal powers of either class. (1868-9, c. 270, ss. 1, 2; Code, s. 3317; Rev., s. 5323; C. S., s. 7624.)

§ 147-2. Legislative officers. — The legislative officers are:

(1) Fifty Senators;
(2) One hundred and twenty members of the House of Representatives;
(3) A Speaker of the House of Representatives;
(4) A clerk and assistants in each house;

(5) A doorkeeper and assistants in each house;
(6) As many subordinates in each house as may be deemed necessary. (1868-9, c. 270, s. 3; Code, s. 3318; Rev., s. 5324; C. S., s. 7625.)

§ 147-3. Executive officers. — (a) Executive officers are either:
(1) Civil;
(2) Military.

(b) Civil executive officers are:
(1) General, or for the whole State;
(2) Special, or for special duties in different parts of the State;
(3) Local, or for a particular part of the State.

(c) The general civil executive officers of this State are as follows:
(1) A Governor;
(2) A Lieutenant Governor;
(3) Private secretary for the Governor;
(4) A Secretary of State;
(5) An Auditor;
(6) A Treasurer;
(7) An Attorney General;
(8) A Superintendent of Public Instruction;
(9) The members of the Governor's Council;
(10) A Commissioner of Agriculture;
(11) A Commissioner of Labor;
(12) A Commissioner of Insurance. (1868-9, c. 270, ss. 24, 25, 26; Code, s. 3319; 1899, c. 54, ss. 3, 4; c. 373; 1901, c. 479, s. 4; Rev., s. 5325; C. S., s. 7626; 1931, c. 312, s. 5; 1943, c. 170.)

§ 147-4. Executive officers — election; term; induction into office. — The executive department shall consist of a Governor, a Lieutenant Governor, a Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Insurance, and a Commissioner of Labor, who shall be elected for a term of four years, by the qualified electors of the State, at the same time and places, and in the same manner, as members of the General Assembly are elected. Their term of office shall commence on the first day of January next after their election and continue until their successors are elected and qualified. The persons having the highest number of votes, respectively, shall be declared duly elected, but if two or more be equal and highest in votes for the same office, then one of them shall be chosen by joint ballot of both houses of the General Assembly. Contested elections shall be determined by a joint ballot of both houses of the General Assembly in such manner as shall be prescribed by law. On the first Thursday after the convening of the General Assembly, the person duly elected Governor shall, in the presence of a joint session of the two houses of the General Assembly, take the oath of office prescribed by law and be immediately inducted into the office of Governor. Should the Governor elected not be present at such joint session, then he may, as soon thereafter as he may deem proper, take the oath of office before some justice of the Supreme Court and be inducted into office. As soon as the result of such election as to other officers of the executive department named in Article III, Sec. 1, of the Constitution shall be ascertained and published, the officers elected to such offices shall, as soon as may be, take the oath of office prescribed by law for such officers and be inducted into the offices to which they have been elected. (Const., art. 3, ss. 1, 3; 1897, c. 1, ss. 1, 2, 3; Rev., s. 5326; C. S., s. 7627; 1931, c. 312, s. 5; 1953, c. 2.)

Editor's Note. — The reference in this section to Art. III, § 1, of the Constitution is to that section in the Constitution of 1868. See now N.C. Const., Art. III, § 7.

§ 147-5. Executive officers — report to Governor; reports transmitted to General Assembly. — It shall be the duty of the officers of the executive department to submit their respective reports to the Governor to be transmitted by him with his message to the General Assembly. (1813, c. 60, s. 2, P. R.; Rev., s. 5373; C. S., s. 7628.)

ARTICLE 2.

Expenses of State Officers and State Departments.

§ 147-6. Expenses paid by warrants of State Auditor; statements filed. —All salaries, purchases of equipment and expenses authorized by law to be paid out of the various funds herebefore mentioned shall be paid by warrant drawn by the State Auditor on the State Treasurer. The officer of State or the head of any department thereof shall file with the State Auditor an itemized statement of the salaries, bills for purchases of equipment and other expenses of his department, and the State Auditor shall draw warrants on the State Treasurer for the payment of all salaries, purchases of equipment, and expenses as authorized by law, to be paid by the said officer of State or head of any department thereof, as evidenced by statements so approved and filed. The State Treasurer is hereby authorized and directed to pay said warrants. (1919, c. 117, s. 2; C. S., s. 7630.)

§ 147-7. Traveling expenses on State's business. — When, to efficiently and properly carry into effect and execute any of the duties imposed by his appointment or by the provision of any statute of this State, and provide for the expenses thereof, it is required that any officer of the State or any employee of any department thereof shall travel from place to place, such traveling and other expenses as shall be required shall be approved by said officer or head of the department whose employee incurs such expenses. (1919, c. 117, s. 3; C. S., s. 7631.)

§ 147-8. Mileage allowance to officers or employees using public or private automobiles. — Where it is provided by any law affecting the State of North Carolina, or any subdivision thereof, whereby any employee or officer of the same is allowed to charge mileage for the use of any motor vehicle when owned by the State or any subdivision thereof or by any such employee or officer of the State or any subdivision thereof, when in the discharge of any duties imposed upon him by reason of his employment or office, the same is hereby repealed to the extent that said charge shall be limited to the actual miles traveled by said motor vehicle and no mileage charge shall be allowed for but one occupant of any motor vehicle so used, and provided further that no such mileage charge shall exceed seven cents (7¢) per mile. (1931, c. 382, s. 1; 1953, c. 675, s. 20.)

Local Modification. — Guilford: 1961, c. 905; Lee: 1967, c. 58, s. 1; Mecklenburg: 1965, c. 240, s. 1; City of Greensboro: 1959, c. 1137, s. 15.

§ 147-9. Unlawful to pay more than allowance. — It shall be unlawful for any officer, auditor, bookkeeper, clerk or other employee of the State of North Carolina or any subdivision thereof to knowingly approve any claim or charge on the part of any person for mileage by reason of the use of any motor vehicle owned by the State or any subdivision thereof or by any person and used in the pursuit of his employment or office in excess of seven cents (7¢) per mile as set out in G. S. 147-8 and any officer, auditor, bookkeeper, clerk or other employee violating the provisions of this section shall be guilty of a misdemeanor. (1931, c. 382, s. 2; 1953, c. 675, s. 21.)

Local Modification. — Lee: 1967, c. 58, s. 2; Mecklenburg: 1965, c. 240, s. 2; City of Greensboro: 1959, c. 1137, s. 16.

§ 147-9.1. Municipalities and counties exempt. — Nothing in this Article shall be deemed to be applicable to counties or municipalities or to limit or restrict the amount of any automobile mileage allowance, or automobile expense allowance, or any other travel expense allowance or payment which may be paid by a county or municipality or by any board, commission, or other agency of any county or municipality. (1967, c. 941; 1969, c. 180, s. 2.)

ARTICLE 2A.

Annuities for State Employees.

§ 147-9.2. Definitions. — The following words when used in this Article shall have the meanings ascribed to them in this section except when the context clearly indicates a different meaning:

(1) "Chief executive officer" shall mean the person or group of persons responsible for the administration of any department or agency of the State of North Carolina, or of a wholly owned institution or instrumentality thereof, or an agent of such chief executive officer duly authorized to enter into the contracts with State employees referred to in G.S. 147-9.3 and 147-9.4.

(2) "Employee" shall mean a permanent employee of the State of North Carolina, or if [of] any of its departments or agencies, or of any of its wholly owned institutions and instrumentalities.

(3) "Employer" shall mean the State of North Carolina, its departments and agencies, and its wholly owned institutions and instrumentalities. (1971, c. 433, s. 1.)

§ 147-9.3. Annuity contracts; salary deductions. — Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision of law relating to salaries or salary schedules of State employees, if the employee be one described in section 403(b) (1) (A) (i) or (ii) of the United States Internal Revenue Code, the chief executive officer of such employee, on behalf of the employer, may enter into an annual contract with the employee which provides for a reduction in salary below the total established compensation or salary schedule for a term of one year. The chief executive officer shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said employee. An employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective. The agreement for salary reduction referred to herein shall be effective under the necessary regulations and procedures adopted by the chief executive officer and on forms prescribed by him. Notwithstanding any other provision of law, the amount by which the salary of an employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any. (1971, c. 433, s. 2.)

§ 147-9.4. Deferred compensation plan. — Notwithstanding the provisions of G.S. 147-62, and notwithstanding any provision of law relating to salaries or salary schedules of State employees, the chief executive officer of an employee, on behalf of the employer, may enter into an annual contract with an employee under which the employee irrevocably elects to defer receipt of a portion of his following year's scheduled salary, but only if, as a result of such contract, the income so deferred is not constructively received by the employee in the year in which it was earned, for federal income tax purposes. In addition, the income so deferred must be used to purchase an annuity or retirement income contract for the benefit of said employee, or to purchase shares in mutual funds for his benefit. An employee who has agreed to a deferred compensation plan for this purpose shall not have the right to receive the income so deferred in cash or in any way other than as provided above. Funds used for the purchase of an annuity or retirement income contract or mutual fund shares shall not be in lieu of any amount earned by the employee before his election to defer compensation has become effective. The agreement to defer income referred to herein shall be effective under the necessary regulations and procedures adopted by the chief executive officer and on forms prepared by him. Notwithstanding any other provisions of law, the amount by which the salary of an employee is deferred pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any. (1971, c. 433, s. 3.)

ARTICLE 3.

The Governor.

§ 147-10. Governor to reside in Raleigh; mansion and accessories. — The Governor shall reside in the City of Raleigh during his continuance in office. A convenient and commodious furnished dwelling house, supplied with necessary lights, fuel, and water, shall be provided for his accommodation; and an automobile and driver shall be provided and maintained for the use of the executive mansion. (1868-69, c. 270, ss. 32, 33; Code, ss. 3325, 3326; 1885, c. 244; Rev., s. 5327; 1919, c. 307; C. S., s. 7635.)

§ 147-11. Salary and expense allowance of Governor; allowance to person designated to represent Governor's office. — The salary of the Governor shall be forty-five thousand dollars ($45,000) per annum, payable monthly. He shall be paid annually the sum of five thousand dollars ($5,000) as an expense allowance in attending to the business for the State and for expenses out of the State and in the State in representing the interest of the State and people, incident to the duties of his office, the said allowance to be paid monthly. In addition to the foregoing allowance, the actual expenses of the Governor while traveling outside the State on business incident to his office shall be paid by the State Treasurer on a warrant issued by the Auditor. Whenever a person who is not a State official or employee is designated by the Governor to represent the Governor's office, such person shall be paid actual travel expenses incurred in the performance of such duty; provided that the payment of such travel expense shall conform to the provisions of the biennial appropriation act in effect at the time the payment is made. (1879, c. 240; Code, s. 3720; 1901, c. 8; Rev., s. 2736; 1907, c. 1009; 1911, c. 89; 1917, cc. 11, 235; 1919, c. 320; C. S., s. 3858; 1929, c. 276, s. 1; 1947, c. 994; 1953, c. 1, s. 1; 1961, c. 1157; 1963, c. 1178, s. 1; 1965, c. 1091, s. 1; 1971, c. 1083, s. 1; 1973, c. 600.)

§ 147-11.1. Succession to office of Governor; Acting Governor. — (a) Lieutenant Governor. —

(1) The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify. The Lieutenant Governor shall become

Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(b) President of Senate, Speaker of the House and Other Officers. —

(1) If, by reason of failure to qualify, death, resignation, or removal from office, there is neither a Governor nor a Lieutenant Governor to discharge the powers and duties of the office of Governor, then the President of the Senate shall, upon his resignation as President of the Senate and as Senator, become Governor.

(2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Governor, then the Speaker of the House of Representatives shall, upon his resignation as Speaker and as Representative, become Governor.

(3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Governor, shall, upon his resignation of the office which places him in the order of succession, become Governor: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(c) Acting Governor Generally. —

(1) If, by reason of absence from the State or physical or mental incapacity, there is neither a Governor nor a Lieutenant Governor qualified to discharge the powers and duties of the office of Governor, then the President of the Senate shall become Acting Governor.

(2) If, at the time when under subdivision (1) of this subsection the President of the Senate is to become Acting Governor, there is no President of the Senate, or the President of the Senate fails to qualify as Acting Governor, then the Speaker of the House of Representatives shall become Acting Governor.

(3) If, at the time when under subdivision (2) of this subsection the Speaker of the House of Representatives is to become Acting Governor, there is no Speaker of the House of Representatives, or the Speaker of the House of Representatives fails to qualify as Acting Governor, then that officer of the State of North Carolina who is highest on the following list, and who is not under disability to serve as Acting Governor, shall become Acting Governor: Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

(d) Governor Serving under Subsection (c). — An individual serving as Acting Governor under subsection (c) of this section shall continue to act for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified, except that:

(1) If his tenure as Acting Governor is founded in whole or in part upon the absence of both the Governor and Lieutenant Governor from the State, then he shall act only until the Governor or Lieutenant Governor returns to the State; and

(2) If his tenure as Acting Governor is founded in whole or in part upon the physical or mental incapacity of the Governor or Lieutenant Governor, then he shall act only until the removal of the incapacity of the Governor or Lieutenant Governor.

(e) Officers to Which Subsections (b), (c) and (d) Applicable. — Subsections (b), (c), and (d) of this section shall apply only to such officers as are eligible to the office of Governor under the Constitution of North Carolina, and only to officers who are not under impeachment by the House of Representatives at the time they are to become Governor or Acting Governor.

(f) Compensation of Acting Governor. — During the period that any individual serves as Acting Governor under subsection (c) of this section, his compensation shall be at the rate then provided by law in the case of the Governor. (1961, c. 992, s. 1.)

Cross Reference. — See N. C. Const., Art. III, § 3, and the note thereto.

§ 147-12. Powers and duties of Governor. — In addition to the powers and duties prescribed by the Constitution, the Governor has the powers and duties prescribed in this and the following sections:

(1) He is to supervise the official conduct of all executive and ministerial officers; and when he shall deem it advisable he shall visit all State institutions for the purpose of inquiring into the management and needs of the same, and for the purpose of paying the expenses of such visitation the Auditor is hereby directed to draw an order on the Treasurer in favor of the Governor to pay his expenses for each visitation.

(2) He is to see that all offices are filled, and the duties thereof performed, or in default thereof apply such remedy as the law allows, and if the remedy is imperfect, acquaint the General Assembly therewith.

(3) He is to make the appointments and fill the vacancies not otherwise provided for in all departments.

In every case where the Governor is authorized by statute to make an appointment to fill a State office, he may also appoint to fill any vacancy occurring in that office, and the person he appoints shall serve for the unexpired term of the office and until his successor is appointed and qualified.

In every case where the Governor is authorized by statute to appoint to fill a vacancy in an office in the executive branch of State government, the Governor may appoint an acting officer to serve

a. During the physical or mental incapacity of the regular holder of the office to discharge the duties of his office,

b. During the continued absence of the regular holder of the office, or

c. During a vacancy in an office and pending the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

An acting officer appointed in accordance with this subsection may perform any act and exercise any power which a regularly appointed holder of such office could lawfully perform and exercise. All powers granted to an acting officer under this subsection shall expire immediately

a. Upon the termination of the incapacity of the officer in whose stead he acts,
b. Upon the return of the officer in whose stead he acts, or
c. Upon the selection and qualification, in the manner prescribed by statute, of a person to serve for the unexpired term.

The Governor may determine (after such inquiry as he deems appropriate) that any of the officers referred to in this paragraph is physically or mentally incapable of performing the duties of his office. The Governor may also determine that such incapacity has terminated.

The compensation of an acting officer appointed pursuant to the provisions of this subdivision shall be fixed by the Governor with the approval of the Advisory Budget Commission.

(4) He is the sole official organ between the government of this State and other states, or the government of the United States.

(5) He has the custody of the great seal of the State.

(6) If he be apprised by the affidavits of two responsible citizens of the State that there is imminent danger that the statute of this State forbidding prizefighting is about to be violated, he shall use, as far as necessary, the civil and military power of the State to prevent it, and to have the offenders arrested and bound to keep the peace.

(7) He shall annually appoint eight members to the board of directors of the North Carolina Railroad, who shall serve for one year until the next annual meeting of stockholders held for the purpose of electing or naming directors.

(8) In carrying out his ex officio duties, he is authorized to designate his personal representative to attend meetings and to act in his behalf as he directs.

(9) He is authorized to appoint such personal staff as he deems necessary to carry out effectively the responsibilities of his office.

(10) He is hereby empowered to contract in behalf of the State with the government of the United States to the extent allowed by the laws of North Carolina for the purpose of securing the benefits available to this State under the Federal Highway Safety Act of 1966. To that end, he shall coordinate the activities of any and all departments and agencies of this State and its subdivisions relating thereto.

(11) Upon being furnished information from law-enforcement officers that public roads or highways or other public vehicular areas, as defined in G.S. 20-16.2(h), are being blocked by privately owned and operated vehicles or by any other means, thereby impeding the free flow of goods and merchandise in North Carolina, he, if such information warrants, is authorized to declare that a state of emergency exists in the affected area, and is further authorized to order that the Highway Patrol and/or national guard remove the offending vehicles or other causes of the blockade from the emergency area. (1868-9, c. 270, s. 27; 1870-1, c. 111; 1883, c. 71; Code, s. 3320; 1895, c. 28, s. 5; 1905, c. 446; Rev., s. 5328; C. S., s. 7636; 1955, c. 910, s. 3; 1959, c. 285; 1967, c. 1253; 1973, c. 1148.)

Cross References. — For sections placing Governor and Council of State in charge of State's interest in railroads, canals and other works of internal improvements, see §§ 124-1 through 124-7. As to Governor's power to appoint, see Constitution, Art. III, §§ 5 and 7; Art. IV, § 19. As to investment of surplus State funds, see § 147-69.1.

State Government Reorganization. — The Directors of the North Carolina Railroad were transferred to the Department of Transportation and Highway Safety (now Department of Transportation) by former § 143A-105, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1975, c. 716, s. 5. For present provisions as to the Department of Transportation, see § 143B-345 et seq.

The Governor's authority with regard to the Federal Highway Safety Act of 1966 was transferred to the Department of

Transportation and Highway Safety (now Department of Transportation) by former § 143A-101, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1975, c. 716, s. 5. For present provisions as to the Department of Transportation, see § 143B-345 et seq.

Mandamus to Compel Performance of Duties. — Under subdivisions (1) and (2) of this section the Governor has the right to bring mandamus proceedings against the State Auditor to compel the performance of the ministerial duties prescribed by statute which do not involve any official discretion. Russell v. Ayer, 120 N.C. 180, 27 S.E. 133 (1897).

The right of the Governor to appoint officers is limited to constitutional officers and then only when the Constitution expressly provides for such an appointment. State ex rel. Salisbury v. Croom, 167 N.C. 223, 83 S.E. 354 (1914).

As to appointments under subdivision (3) of this section prior to 1959 amendment, see State ex rel. Salisbury v. Croom, 167 N.C. 223, 83 S.E. 354 (1914).

§ 147-13. May convene Council of State; quorum; journal. — (a) The Governor may convene the Council for consultation whenever he may deem it proper. In all meetings of the Council of State, five members exclusive of the Governor shall constitute a quorum.

(b) The advice and proceedings of the Council of State shall be entered in a journal, to be kept for this purpose exclusively and signed by all members present. Any member of the Council may have entered in the journal his dissent to any part of the journal. The journal shall be maintained by the Governor and shall be placed before the General Assembly when called for by either house. (1868-9, c. 270, s. 40; Code, s. 3335; Rev., s. 5329; C. S., s. 7637; 1971, cc. 32, 151.)

§ 147-13.1. Governor's power to consolidate State agencies. — (a) The Governor is hereby authorized to direct the inauguration of studies to determine which agencies of the State conduct operations which are so nearly related to the operations of one or more other agencies that a consolidation would produce the same or a more efficient operational result at a reduction in cost, and to prepare recommendations to be presented to the 1971 General Assembly to effect such consolidations.

(b) For purposes of conducting the study, the Governor is authorized to utilize funds available to him from private sources, or from federal or other governmental grants, to be matched, as may be required, by funds available within the existing Department of Administration budget.

(c) The Governor shall direct that agencies which should be consolidated with or absorbed into other agencies having similar responsibilities and duties, as determined by the outcome of the study, shall be so consolidated or absorbed when, in his opinion, efficiency in State governmental operations will be increased thereby, or when such consolidation will result in a reduction in the cost of administering State activities without a reduction in the effectiveness of such operations; provided, however, that the Governor shall not direct such consolidation or combination as would diminish the duty or authority of any State agency or institution created by act of the General Assembly. (1969, c. 1209, ss. 1-3.)

§ 147-14. Appointment of private secretary; official correspondence preserved; books produced before General Assembly. — The Governor shall appoint a private secretary, who shall enter in books kept for that purpose all such letters, written by and to the Governor, as are official and important, and such other letters as the Governor shall think necessary. Such books shall be deposited in the office of the executive by the private secretary, and there carefully preserved, and the Governor shall produce the same before the General Assembly whenever requested. (1868-9, c. 270, ss. 33, 34; Code, ss. 3326, 3327; Rev., s. 5330; C. S., s. 7638.)

§ 147-15. Salary of private secretary. — The salary of the private secretary to the Governor shall be fixed by the Governor with the approval of the Advisory Budget Commission. (R. C., c. 102, s. 12; 1856-7, p. 71, res.; 1881, c. 346; Code,

ss. 1689, 3721; P.R. 1901, c. 405; 1903, c. 729; Rev., s. 2737; 1907, c. 830; 1911, c. 95; 1913, c. 1; 1915, c. 50; 1917, c. 214; C. S., s. 3859; 1921, c. 227; 1929, c. 322, ss. 1, 2; 1945, c. 45; 1953, c. 675, s. 22; 1955, c. 910, s. 4; c. 1313, s. 8; 1961, c. 738, s. 1.)

§ 147-15.1. Fees collected by private secretary. — The secretary to the Governor shall charge and collect the following fees, to be paid by the person for whom the services are rendered: for the commission of a notary public, ten dollars ($10.00); for the commission of a special policeman, five dollars ($5.00). All fees collected by the secretary shall be paid into the State treasury. (1961, c. 738, s. 2; 1969, c. 563, s. 2.)

§ 147-16. Records kept; certain original applications preserved. — The Governor shall cause to be kept the following records:

(1) A register of all applications for pardon, or for commutation of any sentence, with a list of the official signatures and recommendations in favor of such application.

(2) An account of all his official expenses and disbursements, including the incidental expenses of his department, and the rewards offered by him for the apprehension of criminals, which shall be paid upon the warrant of the Auditor.

These records and the originals of all applications, petitions, and recommendations and reports therein mentioned shall be preserved in the office of the Governor, but when applications for offices are refused he may, in his discretion, return the papers referring to the application. (1868-9, c. 270, ss. 29, 30; 1870-1, c. 111; Code, ss. 3322, 3323; Rev., s. 5331; C. S., s. 7639.)

§ 147-16.1. Publication of executive orders. — Executive orders of the Governor which have the force of law may be printed as an appendix to the Session Laws of North Carolina. The Governor's office may transmit any such executive orders to the Legislative Services Officer who shall cause them to be printed with the Session Laws. (1971, c. 1196.)

§ 147-17. May employ counsel in cases wherein State is interested. — (a) No department, agency, institution, commission, bureau or other organized activity of the State which receives support in whole or in part from the State shall employ any counsel, except with the approval of the Governor. In any case or proceeding, civil or criminal, in or before any court or agency of this State or any other state or the United States, or in any other matter in which the State of North Carolina is interested, the Governor may employ such special counsel as he may deem proper or necessary to represent the interest of the State, and may fix the compensation for their services.

(b) The Attorney General shall be counsel for all departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State. Whenever the Attorney General shall advise the Governor that it is impracticable for him to render legal services to any State agency, institution, commission, bureau or other organized activity, or to defend a State employee or former employee as authorized by Article 31A of Chapter 143 of the General Statutes, the Governor may authorize the employment of such counsel, as in his judgment, should be employed to render such services, and may fix the compensation for their services.

(c) The Governor may direct that the compensation fixed under this section for special counsel shall be paid out of appropriations or other funds credited to the appropriate department, agency, institution, commission, bureau, or other organized activity of the State or out of the Contingency and Emergency Fund. (1868-9, c. 270, s. 6; 1870-1, c. 111; 1873-4, c. 160, s. 2; 1883, c. 71; Code, ss. 3320, 3324; 1901, c. 744; Rev., s. 5332; C. S., s. 7640; 1925, c. 207, s. 3; 1961, c. 1007; 1963, c. 1009; 1967, c. 1092, s. 2.)

Cross Reference. — As to defense of State employees, see §§ 143-300.2 to 143-300.5.

Editor's Note. — For article entitled, "Student Legal Services at the University of North Carolina at Chapel Hill," see 7 N.C. Cent. L.J. 286 (1976).

§ 147-18. To designate "Indian Day". — The Governor of North Carolina is hereby empowered to set aside some day which shall be called "Indian Day" on which Indian lore shall receive emphasis in the public schools of the State and among the citizens of North Carolina. (Resolutions 54, 1937, p. 957.)

§ 147-19. To appoint a day of thanksgiving. — The Governor is directed to set apart a day in every year, and by proclamation give notice thereof, as a day of solemn and public thanksgiving to Almighty God for past blessings and of supplication for His continued kindness and care over us as a State and a nation. (1868-9, c. 270, s. 39; Code, s. 3334; Rev., s. 5333; C. S., s. 7641.)

§ 147-20: Repealed by Session Laws 1955, c. 867, s. 13.

§ 147-21. Form and contents of applications for pardon. — Every application for pardon must be made to the Governor in writing, signed by the party convicted, or by some person in his behalf. And every such application shall contain the grounds and reasons upon which the executive pardon is asked, and shall be in every case accompanied by a certified copy of the indictment, and the verdict and judgment of the court thereon. (1869-70, c. 171; 1870-1, c. 61; Code, s. 3336; Rev., s. 5334; C. S., s. 7642.)

Cross Reference. — As to Governor's power to pardon, see Art. III, § 5 of the Constitution.

§ 147-22. Application for pardon to include record. — Any application for the pardon of a prisoner committed to the discharge [charge] of the Board of Transportation shall include a record of such prisoner since he was committed to the charge of the Board of Transportation; and in determining whether or not a parole or pardon shall be granted, consideration shall be given to the record of such prisoner; and the record of such prisoner shall be available to those making the application. (1917, c. 286, s. 20; C. S., s. 7739; 1925, c. 163; 1973, c. 507, s. 5.)

§ 147-23. Conditional pardons may be granted. — In any case in which the Governor is authorized by the Constitution to grant a pardon he may, upon the petition of the prisoner, grant it, subject to such conditions, restrictions, and limitations as he considers proper and necessary, and he may issue his warrant to all proper officers to carry such pardon into effect in such manner as he thinks proper. (1905, c. 356; Rev., s. 5335; C. S., s. 7643.)

§ 147-24. Governor's duties when conditions of pardon violated. — If a prisoner who has been pardoned upon conditions to be observed and performed by him violates such conditions, or any of them, the Governor, upon receiving information of such violation, shall forthwith cause him to be arrested and detained until the case can be examined by him. The Governor shall examine the case of such prisoner, and if it appears by his own admission or by such evidence as the Governor may require that he has violated the conditions of his pardon, the Governor shall order him remanded and confined for the unexpired term of his sentence; said confinement, if the prisoner is under any other sentence of imprisonment at the time of said order, to begin upon expiration of such sentence. In computing the period of his confinement the time between the conditional pardon and subsequent arrest shall not be taken to be a part of the time of his sentence. If it appears to the Governor that he has not broken the conditions of his conditional pardon he shall be released and his conditional pardon shall remain in force. (1905, c. 356, ss. 2, 3; Rev., s. 5336; C. S., s. 7644.)

Editor's Note. — This section is reviewed in 1 N.C.L. Rev. 47.

Conditional Pardon. — The Governor may grant a pardon upon a condition precedent that the prisoner pay costs of trial; and upon condition subsequent, that he remain of good character, and be sober and industrious. See N.C. Const., Art. III, § 5. Ex parte Williams, 149 N.C. 436, 63 S.E. 108 (1908).

Same — Revocation. — After delivery and acceptance of a pardon with conditions precedent and subsequent, it is irrevocable upon the compliance by the prisoner with the condition precedent, unless he shall violate the conditions subsequent by his conduct after the release. Ex parte Williams, 149 N.C. 436, 63 S.E. 108 (1908).

Rearrest of Paroled Prisoner. — Under the provisions of the State Constitution and statutes, a "parole" granted by the Governor to a prisoner imports a conditional pardon, and the Governor may cause his rearrest either upon his own admissions, or on such evidence as he may require, for violating the conditions which the prisoner has accepted under the terms of the parole. State v. Yates, 183 N.C. 753, 111 S.E. 337 (1922).

Reasonable Conditions Imposed. — The power of the Governor to grant a conditional pardon is generally subject to the limitation that the conditions imposed must not be illegal, immoral or impossible of performance, which does not apply to cases wherein he is only required not to violate the statute law, and remain of good conduct. State v. Yates, 183 N.C. 753, 111 S.E. 337 (1922).

Same — Breach by Prisoner. — Where the prisoner has accepted his freedom upon the terms of the conditional pardon from the Governor, his breach of such conditions voids the pardon and cancels his right to further immunity from punishment. State v. Yates, 183 N.C. 753, 111 S.E. 337 (1922).

The essential part of a sentence for a violation of the criminal law is the punishment for the offense committed, and not the time the sentence shall begin and end; and where the prisoner has accepted a conditional pardon from the Governor and has obtained his freedom, the breaking of the condition after the term would have otherwise expired, affords no legal excuse why he should not be recommitted to serve out the balance of his sentence. State v. Yates, 183 N.C. 753, 111 S.E. 337 (1922).

§ 147-25. Duty of sheriff and clerk on pardon granted. — If a prisoner is pardoned conditionally or unconditionally, or his punishment is commuted, the officer to whom the warrant for such purpose is issued shall, as soon as may be after executing it, make return thereof, signed by him, with his doing thereon, to the Governor's office, and shall file in the office of the clerk of the court in which the offender was convicted an attested copy of the warrant and return, and the clerk shall file the same in his office and subjoin a brief abstract thereof to the record of the conviction and sentence, and at the next regular term of said court said warrant shall be entered upon the minutes of the court. (1905, c. 356, s. 4; Rev., s. 5337; C. S., s. 7645.)

When Sheriff Cannot Defeat Pardon. — The sheriff, by returning a pardon after its delivery and acceptance by the prisoner, cannot defeat or impair its legal results. Ex parte Williams, 149 N.C. 436, 63 S.E. 108 (1908).

Recovery of Fine Paid Before Pardon. — Where one convicted of a crime has paid the fine imposed by the court and then has obtained a pardon from the Governor, it is the duty of the court to return the fine upon his application and presenting the pardon, so long as the money remains in its possession and the rights of third persons have not intervened; but where the fine collected has reached its final destination, it is beyond the reach of executive clemency, and may not be recovered. Byrum v. Turner, 171 N.C. 86, 87 S.E. 975 (1916).

§ 147-26. To procure great seal of State; its description. — The Governor shall procure for the State a seal, which shall be called the great seal of the State of North Carolina, and shall be two and one-quarter inches in diameter, and its design shall be a representation of the figures of Liberty and Plenty, looking toward each other, but not more than half-fronting each other and otherwise disposed as follows: Liberty, the first figure, standing, her pole with cap on it in her left hand and a scroll with the word "Constitution" inscribed thereon in her right hand. Plenty, the second figure, sitting down, her right arm half extended towards Liberty, three heads of grain in her right hand, and in her left, the small end of her horn, the mouth of which is resting at her feet, and the contents of the horn rolling out.

The background on the seal shall contain a depiction of mountains running from left to right to the middle of the seal and an ocean running from right to left to the middle of the seal. A side view of a three-masted ship shall be located on the ocean and to the right of Plenty. The date "May 20, 1775" shall appear within the seal and across the top of the seal and the words "esse quam videri" shall appear at the bottom around the perimeter. The words "THE GREAT SEAL of the STATE of NORTH CAROLINA" shall appear around the perimeter. No other words, figures or other embellishments shall appear on the seal.

It shall be the duty of the Governor to file in the office of Secretary of State an impression of the great seal, certified to under his hand and attested by the Secretary of State, which impression so certified the Secretary of State shall carefully preserve among the records of his office. (1868-9, c. 270, s. 35; 1883, c. 392; Code, ss. 3328, 3329; 1893, c. 145; Rev., s. 5339; C. S. s. 7646; 1971, c. 167, s. 1.)

The Great Seal of the State of North Carolina. — See opinion of Attorney General to Dr. H.G. Jones, Department of Archives and History, 41 N.C.A.G. 214 (1971).

§ 147-27. Affixing great seal a second time to public papers. — In all cases where any person may find it necessary to have the great seal of the State put again to any public paper, other than a grant for lands, he may prefer his petition to the Governor and Council, who shall, if they deem the same proper, direct the seal to be put thereto. (1868-9, c. 270, s. 38; Code, s. 3333; Rev., s. 5338; C. S., s. 7647.)

§ 147-28. To procure seals for departments and courts. — The Governor shall also procure a seal for each department of the State government to be used for attesting and authenticating grants, proclamations, commissions, and other public acts, in such manner as may be directed by law and the usage established in the public offices; also a seal for every court of record in the State, for the purpose of authenticating the papers and records of such court. All such seals shall be delivered to the proper officers, who shall give a receipt therefor and be accountable for their safekeeping. (1868-9, c. 270, ss. 35, 37; 1883, c. 71; Code, ss. 3328, 3332; Rev., s. 5340; C. S., s. 7648.)

§ 147-29. Seal of Department of State described. — The seal of the Department of State shall be two inches in diameter and shall be of the same design as the great seal of the State, with the words "State of North Carolina, Department of State," surrounding the figures. (1883, c. 238; Code, s. 3330; Rev., s. 5341; C. S., s. 7649.)

§ 147-30. To provide new seals when necessary. — Whenever the great seal of the State shall be lost or so worn or defaced as to render it unfit for use, the Governor shall provide a new one and when such new one is provided the former one, if it can be found, shall be destroyed in the presence of the Governor. Whenever the seal of any department of the State shall be lost or so worn or defaced as to render it unfit for use, a new seal shall be provided by the head of the department and the former one, if it can be found, shall be destroyed in the presence of the head of the department. Whenever the seal of any court of record shall be lost or so worn or defaced as to render it unfit for use, the board of county commissioners of the county in which such court is situate shall provide a new one and the old one, if it can be found, shall be destroyed in the presence of the chairman of the board of county commissioners of such county. (1868-9, c. 270, s. 36; Code, s. 3331; Rev., s. 5342; C. S., s. 7650; 1943, c. 632.)

§ 147-31. Payment for seals. — The Treasurer shall pay the expense of procuring all seals provided for in this Chapter, upon the warrant of the Auditor. (1868-9, c. 270, s. 37; 1883, c. 71; Code, s. 3332; Rev., s. 5343; C. S., s. 7651.)

§ 147-31.1. Office space and expenses for Governor-elect and Lieutenant Governor-elect. — The Department of Administration, upon request of the Governor-elect and Lieutenant Governor-elect, made after the general election for these respective offices, is empowered and directed to provide suitable office space and office staff for each such official for the period between the general election and inauguration.

The Department of Administration shall provide, for the fiscal years in which general election and inauguration of the Governor and Lieutenant Governor shall occur, such sums, not in excess of three thousand five hundred dollars ($3,500) for the Governor-elect, and not in excess of one thousand five hundred dollars ($1,500) for the Lieutenant Governor-elect, as may be necessary for the salary of the staffs and the payment of office expenses of each such official during such interim. (1965, c. 407.)

§ 147-32. Compensation for surviving spouses of Governors. — All surviving spouses of Governors of the State of North Carolina, who shall make written request therefor to the Director of the Budget, shall be paid the sum of three thousand dollars ($3,000) per annum, in equal monthly installments, out of the State treasury upon warrants duly drawn thereon. Provided, that such compensation shall terminate upon the subsequent remarriage of such person. (1937, c. 416; 1947, c. 897, ss. 1, 2; 1955, c. 1314; 1977, c. 554.)

Editor's Note. — The 1977 amendment substituted "surviving spouses" for "widows" near the beginning of the section.

§ 147-33. Compensation and expenses of Lieutenant Governor. — The salary of the Lieutenant Governor shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. In addition to this salary, the Lieutenant Governor shall be paid an annual expense allowance in the sum of four thousand dollars ($4,000). (1911, c. 103; C. S., s. 3862; 1945, c. 1; 1953, c. 1, s. 1; 1963, c. 1050; 1967, c. 1170, s. 1; 1971, c. 913; 1977, c. 802, s. 42.6.)

Editor's Note. — The 1977 amendment rewrote the first sentence, which formerly specified the amount of the salary.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

ARTICLE 3A.

Emergency War Powers of Governor.

§ 147-33.1. Short title. — This Article may be cited as the "North Carolina Emergency War Powers Act." (1943, c. 706, s. 1; 1959, c. 337, s. 6.)

Editor's Note. — Session Laws 1959, c. 337, s. 6, provides: "All the provisions of §§ 1 through 6, inclusive, of Chapter 706 of the Session Laws of 1943, known and cited as the 'North Carolina Emergency War Powers Act,' not inconsistent with this act, are hereby in all respects re-enacted." For other sections of the 1959 act, see §§ 166-1.1, 166-3, 166-6, 166-8.

§ 147-33.2. Emergency war powers of the Governor. — Upon his own initiative, or on the request or recommendation of the President of the United States, the army, navy or any other branch of the armed forces of the United States, the federal Director of Civilian Defense, or any other federal officer, department or agency having duties and responsibilities related to the prosecution of the war or the health, welfare, safety and protection of the civilian population, whenever in his judgment any such action is in the public interest and is necessary for the protection of the lives or property of the people of the State, or for the defense and security of the State or nation, or for the proper conduct of the war and the successful prosecution thereof, the Governor may, with the approval of the Council of State, at any time and from time to time during the existing state of war:

(1) Formulate and execute plans for:

a. The inventory, mobilization, conservation, distribution or use of food, fuel, clothing and other necessaries of life and health, and of land, labor, materials, industries, facilities and other resources of the State necessary or useful in the prosecution of the war;

b. Organization and coordination of civilian defense in the State in reasonable conformity with the program of civilian defense as promulgated from time to time by the Office of Civilian Defense of the federal government; and, further, to effectuate such plans for civilian defense in such manner as to promote and assure the security, protection and mobilization of the civilian population of the State for the duration of the war and in the interest of State and national defense.

(2) Order and carry out blackouts, radio silences, evacuations and all other precautionary measures against air raids or other forms of enemy action, and suppress or otherwise control any activity which may aid or assist the enemy.

(3) Mobilize, coordinate and direct the activities of the police, fire fighting, health, street and highway repair, public utility, medical and welfare forces and services of the State, of the political subdivisions of the State, and of private agencies and corporations, and formulate and execute plans for the interchange and use of such forces and services for the mutual aid of the people of the State in cases of air raid, sabotage or other enemy action, fire, flood, famine, violence, riot, insurrection, or other catastrophe or emergency.

(4) Prohibit, restrict, or otherwise regulate and control the flow of vehicular and pedestrian traffic, and congregation of persons in public places or buildings, lights and noises of all kinds and the maintenance, extension and operation of public utility and transportation services and facilities.

(5) Accept, or authorize any officer or department of the State to accept, from the federal government or any federal agency or instrumentality, or from any other source, grants of funds and grants or loans of equipment, materials, supplies or other property for war or defense purposes, subject to the terms and conditions appertaining to such grants and loans.

(6) Authorize any department or agency of the State to lease or lend to the army, navy or any other branch of the armed forces of the United States, any real or personal property of the State upon such terms and conditions as he may impose, or, on behalf of the State, to make a contract directly therefor.

(7) Authorize the temporary transfer of personnel of the State for employment by the army, navy or any other branch of the armed forces of the United States and fix the terms and conditions of such transfers.

(8) At any time when the General Assembly is not in session, suspend, or modify, in whole or in part, generally or in its application to certain classes of persons, firms, corporations or circumstances, any law, rule or regulation with reference to the subjects hereinafter enumerated, when he shall find and proclaim after such study, investigation or hearings as he may direct, make or conduct, that the operation, enforcement or application of such law, or any part thereof, materially hinders, impedes, delays or interferes with the proper conduct of the war; said subjects being as follows:

a. The use of the roads, streets, and highways of the State, with particular reference to speed limits, weights and sizes of motor vehicles, regulations of automobile lights and signals, transportation of munitions or explosives and parking or assembling of automobiles on highways or any other public place within the State; provided that any changes in the laws referred to in this subdivision shall be first approved by the Board of Transportation and the Commissioner of Motor Vehicles of the State;

b. Public health, insofar as suspension or modification of the laws in reference thereto may be stipulated by the United States Public Health Service or other authoritative agency of the United States government as being essential in the interest of national safety and in the successful prosecution of the war effort; provided that such suspension or modification of public health laws shall first be submitted to and approved by the Commission for Health Services;

c. Labor and industry; provided, however, that any suspension or modification of laws regulating labor and industry shall be only such as are certified by the Commissioner of Labor of the State as being necessary in the interest of national safety and in the furtherance of the war program; and provided further that any such changes as may result in an increase in the hours of employment over and above the limits of the existing statutory provisions shall carry provision for adequate additional compensation; and provided, further, that no changes in such laws or regulations shall be made as affecting existing contracts between labor and management in this State except with the approval of the contracting parties;

d. Whenever it should be certified by the Adjutant General of the State that emergency conditions require such procedure, the Governor, with the approval of the Council of State, shall have the power to call up and mobilize State militia in addition to the existing units of the State guard; to provide transportation and facilities for mobilization and full utilization of the State guard, or other units of militia, in such emergency; and to allocate from the Contingency and Emergency Fund such amounts as may be necessary for such purposes during the period of such emergency;

e. Manufacture, sale, transportation, possession and use of explosives or fireworks, or articles in simulation thereof, and the sale, use and handling of firearms;

(9) Cooperate with agencies established by or pursuant to the laws of the United States and the several states for civilian protection and the promotion of the war effort, and coordinate and direct the work of the offices and agencies of the State having duties and responsibilities directly connected with the war effort and the protection of the civilian population.

(10) Aid in the administration and enforcement in this State of any rationing, freezing, price-fixing or similar order or regulation duly promulgated by any federal officer or agency under or pursuant to the authority of any act of Congress or of any order or proclamation of the President of the United States, by making temporarily available personnel and facilities of the State to assist in the administration thereof and/or by adopting and promulgating in this State an order or regulation substantially embodying the provisions of such federal order or regulation, filing the same in the office of the Secretary of State, prescribing the penalties for the violation thereof, and specifying the State and local officers and agencies to be charged with the enforcement thereof.

(11) Formulate and execute plans and adopt rules for:

a. The organization, recruiting, training, maintenance and operation of aircraft warning services, observation and listening posts, information and control centers and such other services and facilities as may be necessary for the prompt and accurate reception and transmission of air-raid warnings and signals;

b. The organization, recruiting, training, equipment, identification, conduct, powers, duties, rights, privileges and immunities of air-raid wardens, auxiliary police, auxiliary firemen and of the members of all other auxiliary defense and civilian protection forces and agencies.

(12) Adopt, promulgate, publicize and enforce such orders, rules and regulations as may be necessary for the proper and effective exercise of the powers granted by this Article, and amend or rescind the same.

(13) Hold and conduct hearings, administer oaths and take testimony, issue subpoenas to compel the attendance of witnesses and the production of relevant books, papers, records or documents, in connection with any investigation made by him under the authority of this Article. (1943, c. 706, s. 2; 1959, c. 337, s. 6; 1973, c. 476, s. 128; c. 507, s. 5.)

§ 147-33.3. Orders, rules and regulations. — All orders, rules and regulations promulgated by the Governor pursuant to this Article shall have the full force and effect of law from and after the date of the filing of a duly authenticated copy thereof in the office of the Secretary of State. All laws, ordinances, rules and regulations, insofar as they are inconsistent with the provisions of this Article or of any rule, order or regulation made pursuant to this Article, shall be suspended during the period of time and to the extent that such conflict exists. A violation of any such order, rule or regulation, unless otherwise provided therein, shall be deemed a misdemeanor and punishable as such. (1943, c. 706, s. 3; 1959, c. 337, s. 6.)

§ 147-33.4. Immunity. — Neither the State nor any political subdivision thereof, nor the agents or representatives of the State or any political subdivision thereof, under any circumstances, nor any individual, firm, partnership, corporation or other entity, or any agent thereof, in good faith complying with or attempting to comply with any order, rule or regulation made pursuant to this Article, shall be liable for the death or any injury to persons or for any damage to property as the result of any air raid, invasion, act of sabotage, or other form of enemy action, or of any action taken under this Article or such order, rule or regulation. This section shall not be construed to impair or affect the right of any person to receive any benefits or compensation to which he may otherwise be entitled under Workmen's Compensation Law, any pension law, or any other law, or any act of Congress, or any contract of insurance or indemnification. (1943, c. 706, s. 4; 1959, c. 337, s. 6.)

§ 147-33.5. Federal action controlling. — All action taken under this Article and all orders, rules and regulations made pursuant thereto in any field or with respect to any subject matter over which the army or navy or any other department or agency of the United States government has duly taken jurisdiction shall be taken or made with due consideration to the orders, rules, regulations, actions, recommendations and requests of such department or agency and shall be consistent therewith. Blackouts, radio silences and evacuations shall be carried out only in such areas, at such times, and for such periods as shall be designated by air-raid warnings or orders with respect thereto issued by the United States army, or its duly designated agency, and only under such conditions and in such manner as shall be consistent with such warning or order, and practice blackouts shall be held only when and as authorized by the United States army or its duly designated agency. (1943, c. 706, s. 5; 1959, c. 337, s. 6.)

§ 147-33.6. Construction of Article. — This Article shall be construed liberally to effectuate its purposes. (1943, c. 706, s. 6; 1959, c. 337, s. 6.)

ARTICLE 4.

Secretary of State.

§ 147-34. Office and office hours.—The Secretary of State shall attend at his office, in the City of Raleigh, between the hours of 10 o'clock A.M. and three o'clock P.M., on every day of the year, Sundays and legal holidays excepted. (1868-9, c. 270, s. 44; 1870-1, c. 111; Code, s. 3339; Rev., s. 5344; C. S., s. 7652.)

§ 147-35. Salary of Secretary of State. — The salary of the Secretary of State shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. (1879, c. 240, s. 6; 1881, p. 632, res.; Code, s. 3724; Rev., s. 2741; 1907, c. 994; 1919, c. 247, s. 2; C. S., s. 3863; Ex. Sess. 1920, c. 49, s. 4; 1921, c. 11, s. 1; 1931, c. 277; 1933, c. 46; 1935, c. 304; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 14; 1977, c. 802, s. 42.7.)

Cross Reference.—As to bond of Secretary of State, see § 128-8.

Editor's Note. — The 1975, 2nd Sess., amendment increased the salary from $31,000 to $32,544.

The 1977 amendment rewrote the section, which formerly specified the amount of the salary.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 147-36. Duties of Secretary of State.—It is the duty of the Secretary of State:

(1) To attend at every session of the legislature for the purpose of receiving bills which shall have become laws, and to perform such other duties as may then be devolved upon him by resolution of the two Houses, or either of them;

(2) To attend the Governor, whenever required by him, for the purpose of receiving documents which have passed the great seal;

(3) To receive and keep all conveyances and mortgages belonging to the State;

(4) To distribute annually the statutes and the legislative journals;

(5) To distribute the acts of Congress received at his office in the manner prescribed for the statutes of the State;

(6) To keep a receipt book, in which he shall take from every person to whom a grant shall be delivered, a receipt for the same; but he may inclose

grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book;

(7) To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be required by the corporation laws of the State and maintain a record thereof;

(8) To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof;

(9) To maintain a Division of Publications to compile data on the State's several governmental agencies and for legislative reference;

(10) To receive, enroll and safely preserve the Constitution of the State and all amendments thereto;

(11) To serve as a member of such boards and commissions as the Constitution and laws of the State may designate;

(12) To administer the Securities Law of the State, regulating the issuance and sale of securities, as is now or may be directed; and

(13) To receive and keep all oaths of public officials required by law to be filed in his office, and as Secretary of State, he is fully empowered to administer official oaths to any public official of whom an oath is required.

(14) To receive and maintain a journal of all appointments made to any State board, agency, commission, council or authority which is filed in the office of the Secretary of State. (1868-9, c. 270, s. 45; 1881, c. 63; Code, s. 3340; Rev., s. 5345; C. S., s. 7654; 1941, c. 379, s. 6; 1943, cc. 480, 543; 1967, c. 691, s. 53; 1973, c. 1379, s. 1.)

§ 147-36.1. Deputy Secretary of State.—The duly classified Deputy Secretary of State as reflected by the records of the State Department of Personnel, appointed by the Secretary of State to aid him in the discharge of his duties, shall have the authority to perform all acts and duties of the office in the absence of his chief, or in the case of his inability to act, or under his direction. In exercising such authority, certificates relating to documents and other filings, shall be issued in the name of the Secretary of State, printed, typed, stamped or facsimile signature, and signed by the Deputy Secretary of State.

Employees in the office of the Secretary of State designated as deputy or director of specific divisions in the Department, are empowered to issue certificates relating to documents and other filings within the scope of their division. In exercising such authority the certificates shall be issued in the name of the Secretary of State, printed, typed, stamped or facsimile signature, and signed by the deputy or director indicating his approved title. (1967, c. 1265.)

§ 147-37. Secretary of State; fees to be collected.—The Secretary of State shall collect the following fees, namely: copying and certifying a will, grant or patent not exceeding two copy-sheets, fifty cents (50¢), and for every additional copy-sheet, ten cents (10¢); correcting an error not made by himself in a patent, fifty cents (50¢); copying and certifying a plot and survey, fifty cents (50¢) for each warrant or for each 640 acres contained in the plot or survey, not to exceed five dollars ($5.00) for one copy; receiving surveyor's return, making out, recording and endorsing grants, sixty cents (60¢); each certificate, ten cents (10¢); filing and recording a copy of a judgment vacating a grant and all other services thereon, fifty cents (50¢); copying an entry from the journals of the Assembly, forty cents (40¢); copying and certifying the laws of other states, twenty cents (20¢) for each copy-sheet; and in all cases not otherwise provided for, the Secretary of State shall receive for copies of records from his office, one dollar ($1.00) for the first three copy-sheets and ten cents (10¢) a copy-sheet thereafter. (R. C., c. 102, s. 13; 1870-1, c. 81, s. 3; 1881, c. 79; Code, s. 3725; Rev., s. 2742; C. S., s. 3864.)

§ 147-38. Copy-sheet defined.—A copy-sheet shall consist of 100 words, and in reckoning the number of words in a copy-sheet, every date, or amount of money, expressed in figures, as "1885," "$250.90," shall be estimated and charged as one word. (R. C., c. 102, s. 42; 1868-9, c. 279, s. 556; Code, s. 3757; Rev., s. 2805; C. S., s. 3851.)

§ 147-39. Custodian of statutes, records, deeds, etc.—The Secretary of State is charged with the custody of all statutes and joint resolutions of the legislature, all documents which pass under the great seal, and of all the books, records, deeds, parchments, maps, and papers now deposited in his office or which may hereafter be there deposited pursuant to law, and he shall from time to time make all necessary provisions for their arrangement and preservation. Every deed, conveyance, or other instrument whereby the State or any State agency or institution has acquired title to any real property and which is deposited with the Secretary of State shall be filed by him, and indexed according to the county or counties wherein the real property is situated and the name or names of the grantor or grantors and of the grantee; and the real property shall be briefly described in the index. (R. C., c. 104, s. 105; 1868-9, c. 270, s. 41; 1873-4, c. 129; Code, s. 3337; Rev., s. 5347; C. S., s. 7656; 1957, c. 584, s. 5.)

§ 147-40: Repealed by Session Laws 1969, c. 1184, s. 8.

§ 147-41. To keep records of oyster grants.—The Secretary of State shall keep books of records in which shall be recorded a full description of all grounds granted for oyster beds under the provisions of Chapter 119 of the Laws of 1887, and laws amendatory thereof, and shall keep a map or maps showing the position and limits of all public and private grounds. (1887, c. 119, s. 14; Rev., s. 2381; C. S., s. 7657.)

§ 147-42. Binding original statutes, resolutions, and documents.—The original statutes and joint resolutions passed at each session of the General Assembly the Secretary of State shall immediately thereafter cause to be bound in volumes of convenient size. Each such volume shall be lettered on the back with its title and the date of its session. (1866-7, c. 71; 1868-9, c. 270, s. 46; Code, s. 3343; Rev., s. 5348; C. S., s. 7658.)

§ 147-43. Reports of State officers.—The Secretary of State shall file and keep in his office one copy of each of the reports of State officers in the best binding in which any such report is issued, and the State Librarian shall likewise keep five similarly bound copies of each such report. (Rev., s. 5101; 1911, c. 211, s. 7; C. S., s. 7300.)

§§ 147-43.1 to 147-43.3: Repealed by Session Laws 1969, c. 1184, s. 8.

Cross Reference.—For present provisions as to printing of Session Laws, see § 120-34.

§ 147-44: Repealed by Session Laws 1943, c. 48, s. 2.

§ 147-45. Distribution of copies of State publications. — The Secretary of State shall, at the State's expense, as soon as possible after publication, provide such number of copies of the Session Laws and Senate and House Journals to federal, State, and local governmental officials, departments and agencies, and to educational institutions of instruction and exchange use, as is set out in the table below:

Agency or Institution	Session Laws	Assembly Journals
Governor, Office of the	3	2
Lieutenant Governor, Office of the	1	1
Secretary of State, Department of the	3	3
Auditor, Department of the State	3	1
Treasurer, Department of the State	3	1
Local Government Commission	2	0
Public Education, Department of	1	0
Superintendent of Public Instruction	3	1
Controller	1	0
Division of Community Colleges	3	1
Regional Service Centers	1 ea.	0
Justice, Department of		
Office of the Attorney General	25	3
Budget Bureau (Administration)	1	0
Property Control (Administration)	1	1
State Bureau of Investigation	1	0
Agriculture, Department of	3	1
Labor, Department of	5	1
Insurance, Department of	5	1
Administration, Department of	1	1
Budget Bureau	2	1
Controller	1	0
Property Control	1	0
Purchase and Contract	2	0
Policy and Development	1	0
Veterans Affairs Commission	1	0
Natural Resources and Community Development, Department of	1	0
Division of Environmental Management	2	0
Board of Natural Resources and Community Development	1	0
Soil and Water Conservation Commission	1	0
Wildlife Resources Commission	2	0
Revenue, Department of	5	1
Human Resources, Department of	3	0
Board of Human Resources	1	0
Health Services, Division of	3	0
Mental Health and Mental Retardation Services, Division of	1	0
Social Services, Division of	3	0
Facilities Services, Division of	1	0
Youth Services, Division of	1	0
Hospitals and Institutions	1 ea.	0
Transportation, Department of	1	0
Board of Transportation	3	0
Motor Vehicles, Division of	1	0
Commerce, Department of	1	0
Economic Development, Division of	2	0
State Ports Authority	1	0
Alcoholic Beverage Control, State Board of	2	0
Banking Commission	2	0
Utilities Commission	8	1
Industrial Commission	7	0

Agency or Institution	Session Laws	Assembly Journals
Labor Force Development Council	1	0
Milk Commission	5	0
Employment Security Commission	1	1
Correction, Department of	1	0
Commission of Correction	2	0
Parole Commission	2	0
State Prison	1	0
Correctional Institutions	1 ea.	0
Cultural Resources, Department of	1	0
Archives and History, Division of	5	1
State Library	5	5
Publications Division	1	1
Crime Control and Public Safety, Department of	2	1
North Carolina Crime Commission	1	0
Adjutant General	2	0
Elections, State Board of	2	0
Legislative Branch		
State Senators	1 ea.	1 ea.
State Representatives	1 ea.	1 ea.
Principal Clerk — Senate	1	1
Principal Clerk — House	1	1
Reading Clerk — Senate	1	1
Reading Clerk — House	1	1
Sergeant at Arms — House	1	1
Sergeant at Arms — Senate	1	1
Enrolling Clerk	1	0
Engrossing Clerk	1	0
Indexer of the Laws	1	0
Legislative Building Library	25	15
Judicial System		
Justices of the Supreme Court	1 ea.	1 ea.
Judges of the Court of Appeals	1 ea.	1 ea.
Judges of the Superior Court	1 ea.	0
Emergency and Special Judges of the Superior Court	1 ea.	0
District Court Judges	1 ea.	0
District Attorneys	1 ea.	0
Clerk of the Supreme Court	1	1
Clerk of the Court of Appeals	1	1
Administrative Office of the Courts	4	1
Supreme Court Library	AS MANY AS REQUESTED	
Colleges and Universities		
The University North Carolina System		
Administrative Offices	3	0
University of North Carolina, Chapel Hill	65	25
University of North Carolina, Charlotte	3	1
University of North Carolina, Greensboro	3	1
University of North Carolina, Asheville	2	1

Agency or Institution	Session Laws	Assembly Journals
University of North Carolina, Wilmington	2	1
North Carolina State University, Raleigh	5	3
Appalachian State University	2	1
East Carolina University	3	2
Elizabeth City State University	2	1
Fayetteville State University	2	1
North Carolina Agricultural and Technical University	2	1
North Carolina Central University	5	5
Western Carolina University	2	1
Pembroke State University	2	1
Winston-Salem State University	2	1
North Carolina School of the Arts	1	1
Private Institutions		
Duke University	6	6
Davidson College	3	2
Wake Forest University	5	5
Lenoir Rhyne College	1	1
Elon College	1	1
Guilford College	1	1
Campbell College	5	5
Wingate College	1	1
Pfeiffer College	1	1
Barber Scotia College	1	1
Atlantic Christian College	1	1
Shaw University	1	1
St. Augustine's College	1	1
J. C. Smith University	1	1
County and Local Officials		
Clerks of the Superior Court	1 ea.	1 ea.
Register of Deeds	1 ea.	1 ea.
Federal, Out-of-State and Foreign		
Secretary to the President	1	0
Secretary of State	1	1
Secretary of Defense	1	0
Secretary of Agriculture	1	0
Secretary of the Interior	1	0
Secretary of Labor	1	1
Secretary of Commerce	1	1
Secretary of the Treasury	1	0
Secretary of Health, Education and Welfare	1	0
Secretary of Housing and Urban Development	1	0
Secretary of Transportation	1	0
Attorney General	1	0
Postmaster General	1	0
Bureau of Census	1	0
Bureau of Public Roads	1	0
Department of Justice	1	0
Department of Internal Revenue	1	0

Agency or Institution	Session Laws	Assembly Journals
Veterans' Administration	1	0
Farm Credit Administration	1	0
Securities and Exchange Commission	1	0
Social Security Board	1	0
Environmental Protection Agency	1	0
Library of Congress	8	2
Federal Judges resident in North Carolina	1 ea.	0
Federal District Attorneys resident in North Carolina	1 ea.	0
Marshal of the United States Supreme Court	1	0
Federal Clerks of Court resident in North Carolina	1 ea.	0
Supreme Court Library exchange list	1 ea.	0

One copy of the Session Laws shall be furnished the head of any department of State government created in the future.

State agencies, institutions, etc., not found in or covered by this list may, upon written request from their respective department head to the Secretary of State, and upon the discretion of the Secretary of State as to need, be issued copies of the Session Laws on a permanent loan basis with the understanding that should said copies be needed they will be recalled. (1941, c. 379, s. 1; 1943, c. 48, s. 4; 1945, c. 534; 1949, c. 1178; 1951, c. 287; 1953, cc. 245, 266; 1955, c. 505, s. 6; cc. 989, 990; 1957, c. 269, s. 1; cc. 1061, 1400; 1959, c. 215; c. 1028, s. 3; 1965, c. 503; 1967, c. 691, s. 54; cc. 695, 777, 1038, 1073, 1200; 1969, c. 355; c. 608, s. 1; c. 801, s. 2; c. 852, ss. 1, 2; c. 1190, s. 54; c. 1285; 1973, c. 476, ss. 48, 84, 128, 138, 143, 193; c. 507, s. 5; c. 731, s. 1; c. 762; c. 798, ss. 1, 2; c. 1262, ss. 10, 38; 1975, c. 19, s. 59; c. 879, s. 46; 1975, 2nd Sess., c. 983, s. 115; 1977, c. 379, s. 1; c. 679, s. 8; c. 771, s. 4.)

Cross Reference. — As to provision that statutory reference to "Budget Bureau" shall be deemed to refer to the Department of Administration, see § 143-344.

Editor's Note. — The first 1975 amendment corrected an error by substituting "Barber Scotia" for "Barbara Scotia" in the table of schools and hospitals.

The second 1975 amendment substituted "Department of Administration" for "Division of Purchase and Contract" and "Division of Property Control."

The 1975, 2nd Sess., amendment increased the number of copies of the Appellate Reports to be furnished to North Carolina Central University and inserted the provision as to Campbell College.

The first 1977 amendment rewrote this section.

The second 1977 amendment substituted "Mental Health and Mental Retardation Services" for "Mental Health Services."

The third 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources."

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau." See § 143-344(a).

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Sections 116-126 to 116-137, relating to The Caswell School (formerly Caswell Training School) were repealed by Session Laws 1963, c. 1184, s. 7.

Publications Distributed Pursuant to This Statute Belong to Office and Not Individual Who Holds Office. — See opinion of Attorney General to Honorable J. Russell Nipper, Clerk of Superior Court, Wake County, 41 N.C.A.G. 176 (1970).

Advance Sheets of Appellate Division Reports Are Required to Be Distributed to University of North Carolina at Greensboro at No Cost. — See opinion of Attorney General to Mr. Robert Grey Cole, Walter Clinton Jackson Library, University of North Carolina at Greensboro, 43 N.C.A.G. 93 (1973).

§ 147-46: Repealed by Session Laws 1955, c. 987.

§ 147-46.1. Publications furnished State departments, bureaus, institutions and agencies. — Upon request of any State department, bureau, institution or agency, and upon authorization by the Governor and Council of State, the Secretary of State shall supply to such department, bureau, institution or agency copies of any State publications then available to replace worn, damaged or lost copies and such additional sets or parts of sets as may be requested to meet the reasonable needs of such departments, bureaus, institutions or agencies, disclosed by the request.

This section shall not authorize the reprinting of any State publications which would not be ordered without reference to the provisions hereof. (1947, c. 639.)

§ 147-47: Repealed by Session Laws 1955, c. 748.

§ 147-48. Sale of Laws and Journals. — Such Laws and Journals as may be printed in excess of the number directed to be distributed, the Secretary of State may sell at such price as he deems reasonable, not exceeding cost plus ten percent (10%). All proceeds received from sales made pursuant to this section shall be paid into the State treasury. (1941, c. 379, s. 4; 1943, c. 48, s. 4; 1955, c. 978, s. 2; 1967, c. 691, s. 55; 1977, c. 802, s. 50.30.)

Editor's Note. — The 1977 amendment deleted the former second sentence, which authorized the Secretary to allow a discount to licensed booksellers.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 147-49. Disposition of damaged and unsaleable publications. — The Secretary of State is hereby authorized and empowered to dispose of damaged and unsaleable House and Senate Journals and Public Laws of various years at a price to be determined by the Secretary of State. (1939, c. 345; 1967, c. 691, s. 56.)

§ 147-50. Publications of State officials and department heads furnished to certain institutions, agencies, etc. — Every State official and every head of a State department, institution or agency issuing any printed report, bulletin, map, or other publication, shall, on request, furnish copies of such reports, bulletins, maps or other publications to the following institutions in the number set out below:

University of North Carolina at Chapel Hill	25 copies;
University of North Carolina at Charlotte	2 copies;
University of North Carolina at Greensboro	2 copies;
North Carolina State University at Raliegh	2 copies;
East Carolina University at Greenville	2 copies;
Duke University	25 copies;
Wake Forest College	2 copies;
Davidson College	2 copies;
North Carolina Supreme Court Library	2 copies;
North Carolina Central University	5 copies;
Library of Congress	2 copies;
Department of Cultural Resources	5 copies;
Western Carolina University	2 copies;
Appalachian State University	2 copies;
University of North Carolina at Wilmington	2 copies;
North Carolina Agricultural and Technical State University	2 copies;
Legislative Library	2 copies;

and to governmental officials, agencies and departments and to other educational institutions, in the discretion of the issuing official and subject to the supply available, such number as may be requested: Provided that five sets of all such reports, bulletins and publications heretofore issued, insofar as the same are available and without necessitating reprinting, shall be furnished to the North Carolina Central University. The provisions in this section shall not be interpreted to include any of the appellate division reports or advance sheets distributed by the Administrative Office of the Courts. (1941, c. 379, s. 5; 1955, c. 505, s. 7; 1967, cc. 1038, 1065; 1969, c. 608, s. 1; c. 852, s. 3; 1973, c. 476, s. 84; c. 598; c. 731, s. 2; c. 776; 1977, c. 377.)

Editor's Note. — The 1977 amendment added the last sentence of the section.

Free Distribution on Request of Certain Statutory Publications to Certain Institutions. — See opinion of Attorney General to Mr. James H. Thompson, Director, University of North Carolina at Greensboro, 42 N.C.A.G. 94 (1972).

Distribution of S.B.I. Investigative "Bulletin". — This section does not require the distribution of the S.B.I. Investigative "Bulletin" because information contained in it is not of public record, but instead, is information used by law-enforcement officers to collect and compile evidence for the trial of cases. Opinion of Attorney General to Mr. Charles Dunn, 45 N.C.A.G. 92 (1975).

§ 147-51. Clerks of superior courts responsible for Appellate Division Reports; lending prohibited. — From and after March 9, 1927, the clerks of the superior courts of the State of North Carolina are held officially responsible for the volumes of the North Carolina Appellate Division Reports furnished and to be furnished them by the State.

The said clerks of the various courts shall not lend or permit to be taken from their custody the said Reports, nor shall any person with or without the permission of the said clerks take them from their possession. (1927, c. 259; 1969, c. 1190, s. 55.)

§ 147-52: Transferred to § 7A-14 by Session Laws 1975, c. 328.

§ 147-53: Superseded by Session Laws 1943, c. 716.

§ 147-54. Printing, distribution and sale of the North Carolina Manual. — The Secretary of State shall have printed biennially for distribution and sale, five thousand (5,000) copies of the North Carolina Manual, and shall make distribution to the State agencies, individuals, institutions and others as herein set forth.

NORTH CAROLINA STATE GOVERNMENT:

Members of the General Assembly	2 ea.
Officers of the General Assembly	1 ea.
Offices of the Clerk of each House of the General Assembly	1 ea.
Legislative Services Officer	1
Legislative Library	6
Members of the Council of State	2 ea.
Appointed Secretaries of Executive Departments	2 ea.
Personnel of the Department of the Secretary of State	1 ea.
State Board of Elections	2
Divisions of Archives and History, Director	1
Search Room	3
Publications Section	2
State Library	10
Libraries within State Agencies	1 ea.
Justices of the North Carolina Supreme Court	1 ea.
Judges of the North Carolina Court of Appeals	1 ea.
Judges of the North Carolina Superior Court	1 ea.

Supreme Court Library	12
Court of Appeals Library	2
Clerk of the Supreme Court	1
Clerk of the Court of Appeals	1
Reporter of the Supreme Court and Court of Appeals	1
Administrative Office of the Courts	5
NORTH CAROLINA EDUCATIONAL INSTITUTIONS:	
University of North Carolina System	
General Administration Offices	12
Chancellors of the Constituent Institutions	1 ea.
University of North Carolina — Chapel Hill Library	15
North Carolina State University Library	5
East Carolina University Library	5
North Carolina Central University Library	5
Appalachian State University Library	4
University of North Carolina — Charlotte Libarary	4
University of North Carolina — Greensboro Library	4
Western Carolina University Library	4
Other Constituent Institutions Libraries	3 ea.
North Carolina School of the Arts	2
Institute of Government	2
Community Colleges and Technical Institutes	2 ea.
Private Colleges and Universities	
Duke University Library	6
Wake Forest University	6
Campbell College Library	5
Davidson College Library	4
All other Libraries of Senior and Junior Colleges	2 ea.
Public and Private Schools containing grades 8-12	1 ea.
COUNTY GOVERNMENT:	
Clerks of Court	1 ea.
Registers of Deeds	1 ea.
Public Libraries of North Carolina	1 ea.
FEDERAL GOVERNMENT:	
President of the United States	1
North Carolina Members of the Presidential Cabinet	1 ea.
North Carolina Members of the United States Congress	2 ea.
Library of Congress	3
Resident Judges of the Federal Judiciary and United States Attorneys in North Carolina	1 ea.
Secretaries of State of the United States and Territories	1 ea.

After making the above distribution, the remainder shall be sold at the cost of publication plus tax and postage and the proceeds from such sales deposited with the State Treasurer for use by the Publications Division of the Secretary of State's Office to defray the expense of publishing the North Carolina Manual. Libraries and educational institutions not covered in the above distribution shall be entitled to a twenty percent (20%) discount on the cost of any purchase(s). (1933, c. 115, s. 2; 1977, c. 378.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 147-54.1. Division of Publications; duties. — The Secretary of State is authorized to set up a division to be designated as the Division of Publications and to appoint a director thereof who shall be known as the Director of

Publications. This Division shall publish the North Carolina Manual, Directory, Index of Local Legislation and such other publications as may be useful to the members and committees of the General Assembly and other officials of the State and of the various counties and cities. The Secretary may sell these publications at such prices as he deems reasonable; the proceeds of sale shall be paid into the State treasury.

The Division shall also perform all such other duties as may be assigned by the Secretary of State. (1915, c. 202, ss. 1, 2; C. S., ss. 6147, 6148; 1939, c. 316; 1971, c. 685, s. 3; 1977, c. 802, s. 50.31.)

Editor's Note. — The 1977 amendment added the third sentence of the first paragraph.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 147-54.2. Filing of official appointments. — All appointments to any State board, agency, commission, council or authority made on or after June 1, 1974, shall be filed in the office of the Secretary of State of North Carolina. All appointments which are required by this section to be filed shall contain the date of the appointment, the legal authority for the appointment, and the date on which such appointment expires.

Appointments made pursuant to this act between January 1, 1973, and June 1, 1974, shall be filed within 10 days of date of appointment or ratification, whichever occurs last. (1973, c. 1379, s. 2.)

ARTICLE 5.

Auditor.

§ 147-55. Salary of Auditor. — The salary of the State Auditor shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. (1879, c. 240, s. 7; 1881, c. 213; Code, s. 3726; 1885, c. 352; 1889, c. 433; 1891, c. 334, s. 5; Rev., s. 2744; 1907, c. 830, s. 5; c. 994, s. 2; 1911, c. 108, s. 1; c. 136, s. 1; 1913, c. 172; 1919, c. 149; c. 247, s. 7; C. S., s. 3867; Ex. Sess., 1920, c. 49, s. 3; 1921, c. 11, s. 1; 1935, c. 442; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 15; 1977, c. 802, s. 42.8.)

Editor's Note. — The 1975, 2nd Sess., amendment increased the salary from $31,000 to $32,544.

The 1977 amendment rewrote this section, which formerly specified the salary.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 147-56. Office and office hours. — The Auditor shall keep his office at the City of Raleigh, and shall attend thereat between the hours of 10 o'clock A.M. and three o'clock P.M., Sundays and legal holidays excepted. (1868-9, c. 270, ss. 69, 70; Code, s. 3353; Rev., s. 5364; C. S., s. 7674.)

§ 147-57. Bond. — The State Auditor shall be placed under an official bond in a penal sum to be fixed by the Governor and Council of State at not less than fifty thousand ($50,000) dollars. Such official bond shall be corporate surety and furnished by a company admitted to do business in the State. The premiums will be paid by the State out of the appropriations to the State Auditor's Office. Such bond shall be made as part of the blanket bond of State officers and employees provided for in G.S. 128-8. (1929, c. 337, s. 1; 1969, c. 844, s. 13.)

§ 147-58. Duties and authority of State Auditor. — The duties and authority of the State Auditor shall be as follows:

(1) The State Auditor shall except as provided in G.S. 143-25 be independent of any fiscal control exercised by the Director of the Budget or the Department of Administration, and shall be responsible to the Advisory Budget Commission, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the duties and responsibilities of his office.

(2) The State Auditor shall be responsible for conducting a thorough post audit of the receipts, expenditures and fiscal transactions of each and every State agency which in any manner handles State funds; "State agency" is hereby defined to mean any State department, institution, board, commission, commissioner, official or officer of the State.

(3) The Auditor shall be responsible for conducting a complete and detailed audit of the fiscal transactions of each and every State agency, except his own office, at least once each year, such audit to cover the fiscal transactions entered into since the period covered by the previous annual audit of such State agency.

(4) The Auditor is authorized to conduct special audits, in addition to the annual audits, of the accounts of every State agency whenever in his discretion he determines that such is necessary.

(5) The Auditor is authorized to audit at such times as he deems necessary the records of all performances staged on State property under direction of any State agency or wherein any State agency shares in a percentage of gross admission receipts except athletic funds, and the accounts of any private or semiprivate agency receiving State aid.

(6) The Auditor shall make special investigations upon written request from the Advisory Budget Commission, or upon written request from the Governor.

(7) Upon completion of each audit and investigation, the Auditor shall report his findings and recommendations to the Advisory Budget Commission, furnishing a copy of such report to the Governor, a copy to the head of the agency to which the report pertains, and copies to such other persons as he may deem advisable.

(8) If the Auditor shall at any time discover any unauthorized, illegal, irregular, or unsafe handling or expenditure of State funds, or if at any time it shall come to his knowledge that any unauthorized, illegal, irregular, or unsafe handling or expenditure of State funds is contemplated but not consummated, in either case, he shall forthwith report the facts to the Governor with a copy of such report to the Advisory Budget Commission.

(9) The Auditor is authorized and directed in his reports of audits or reports of special investigations to make any comments, suggestions or recommendations he deems desirable concerning any aspect of such agency's activities and operations. He shall, from time to time as he deems desirable, make review concerning economy, and efficiency of agencies operation and program effectiveness and file reports of said operations review with the agency head, the Governor and the Advisory Budget Commission.

(10) In addition to regular audits, the Auditor shall check the treasury records at the time a Treasurer assumes office (not to succeed himself), and therein charge him with the balance in the treasury, and shall check the Treasurer's records at the time he leaves office to determine that the accounts are in order.

(11) The Auditor shall require, when deemed necessary, all persons who have received moneys or securities, or have had the disposition or

management of any property of the State, to render statements thereof to him; and all such persons shall render such statements at such time and in such form as he shall require.

(12) The Auditor shall require all persons who have received any moneys belonging to the State, and who have not accounted therefor, to settle their accounts; upon failure of any person to settle accounts, the Auditor is authorized and directed to call the matter to the attention of the Attorney General and furnish such information as he may direct.

(13) The Auditor shall transmit to the Advisory Budget Commission annually a complete statement of the funds of the State, of its revenues and of the public expenditures during the preceding fiscal year, as revealed by his audits and investigations as herein prescribed, with copies of such statements furnished to the Governor and to such other persons as may be deemed advisable.

(14) The Auditor shall examine as often as may be deemed necessary the accounts of the debits and credits in the bankbook kept by the Treasurer, and if he discovers any irregularity or deficiency therein, unless the same be rectified or explained to his satisfaction, report the same forthwith in writing to the Advisory Budget Commission, with copy of such report to the Governor.

(15) The Auditor may examine the accounts and records of any bank or trust company relating to transactions with the State Treasurer, or with any State department, institution, board, commission, officer, or other agency, or he may require banks doing business with the State to furnish him information relating to transactions with the State or State agencies.

(16) The Auditor and his authorized agents shall have access to and may examine all books, accounts, reports, vouchers, correspondence, files, records, money, investments, and property of any State department, institution, board, commission, officer, or other agency as it relates to the handling of State funds. Every officer or employee of any such agency having such records or property in his possession or under his control shall permit access to and examination of them upon the request of the Auditor or any agent authorized by him to make such request. Should any officer or employee fail to perform the requirements of this section, he shall be guilty of a misdemeanor. The Auditor and his authorized agents are authorized to examine all books and accounts of any individual, firm, or corporation only insofar as it relates to transactions with any department, board, officer, commission, institution, or other agency of the State; provided that such examination shall be limited to those things which might relate to irregularities on the part of any State agency.

(17) The Auditor may, as often as he deems advisable, conduct a detailed review of the bookkeeping and accounting systems in use in the various departments, institutions, commissions, boards and agencies which are supported partially or entirely from State funds. Such examinations would be for the purpose of evaluating the adequacy of systems in use by these agencies and institutions. In instances where the Auditor determines that existing systems are outmoded, inefficient or otherwise inadequate, he shall prescribe and supervise the installation of such changes, as, in his judgment, appear necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful financial statements and reports. In all cases in which major changes in the accounting systems are made, he will be responsible for seeing that the new system is designed to accumulate information required for the

preparation of budget reports and other financial reports required by the Department of Administration. In instances in which departments, institutions, boards, commissions and agencies feel it desirable to revise or alter existing accounting systems, said agencies or institutions shall request the Auditor to make a survey of their systems for the purpose of seeing if such a change is desirable, including the advisability of purchasing or renting accounting equipment. Requisitions for the purchase of accounting equipment or contracts for the rental of accounting equipment for any State department, institution, or agency shall be approved by the Auditor.

(18) The Auditor, or his deputy, while conducting an examination authorized by these sections, shall have the power to administer oath to any person whose testimony may be required in any such examination, and to compel the appearance and attendance of such person for the purpose of such an examination. If any person shall willfully swear falsely in such an examination, he shall be guilty of perjury.

(19) The Auditor may appoint a deputy auditor to perform any duties pertaining to the office, and he may appoint a deputy auditor for any specific purpose; provided that any deputy so appointed shall not be authorized to transfer authority to any other person.

(20) The Auditor shall charge and collect from each examining and licensing board the actual cost of each audit of such board. Costs collected under this subdivision shall be based on the actual expense incurred by the Auditor's office in making such audit and the affected agency shall be entitled to an itemized statement of such costs. Amounts collected under this subdivision shall be deposited in the General Fund as nontax revenue.

(21) Effective July 1, 1955, or as soon thereafter as practical but not later than July 1, 1956, the functions of preaudit of State agency expenditures, issuance of warrants on the State Treasurer for same, and maintenance of records pertaining to these functions shall be transferred from the Auditor's office to the Department of Administration. All books, papers, reports, files and other records of the Auditor's office pertaining to and used in the performance of these functions shall be transferred to the Department of Administration, and office machinery and equipment used primarily in the performance of these functions shall be transferred to the Department of Administration. The Governor, with the advice and consent of the Advisory Budget Commission, is authorized to determine and declare the effective date of the transfer of these functions and to do all things necessary to effect an orderly and efficient transfer; and the Governor, with the advice and consent of the Advisory Budget Commission, is further authorized to transfer to the Department of Administration the unused portion of such funds as may have been appropriated to the Auditor's office for the 1955-57 biennium for the performance of the functions and duties transferred to the Department of Administration under the provisions of this section.

(22) Nothing under this Article shall be construed to affect the right of the Director of the Budget to require information from State agencies under the provisions of Article 1, Chapter 143 of the General Statutes.

(23) Repealed by Session Laws 1977, c. 1029, s. 1.

(24) Upon request of the Council of State, the State Auditor shall conduct an audit of the financial records of an outdoor historical drama corporation or trust, specified in G.S. 143-204.8(c) which has applied for or received an allotment under G.S. 143-204.8(a) for the corporation's

or trust's fiscal year preceding the allotment and the fiscal year for which the allotment is made. The State Auditor shall report the findings of theses audits to the Council of State and the General Assembly. (1868-9, c. 270, ss. 63, 64, 65; 1883, c. 71; Code, s. 3350; Rev., s. 5365; 1919, c. 153; C. S., s. 7675; 1929, c. 268; 1951, c. 1010, s. 1; 1953, c. 61; 1955, c. 576; 1957, c. 269, s. 1; c. 390; 1969, c. 458, s. 1; 1973, c. 507, s. 5; c. 617, s. 3; c. 1211; c. 1415; 1975, c. 879, s. 46; 1977, c. 996, s. 2; c. 1029, s. 1.)

Cross References. — As to being constitutional office, see Const., Art. III, § 7. As to mandamus by Governor to compel performance of certain duties, see note to § 147-12. As to provision that statutory reference to "Budget Bureau" shall be deemed to refer to the Department of Administration, see § 143-344.

Editor's Note. — The third 1973 amendment rewrote the first sentence of subdivision (20), which formerly listed a number of specific agencies and further provided for collection of costs from "any other agency which operates entirely within its own receipts from revenue derived from sources other than the general fund."

The fourth 1973 amendment added the second sentence to subdivision (9).

The 1975 amendment deleted "the Budget Division of" preceding "the Department of Administration" in the fourth sentence of subdivision (17).

The first 1977 amendment added subdivision (24).

The second 1977 amendment repealed subdivision (23), which read: "It shall be the duty of the State Auditor to make an annual audit of the accounts of the National Driving Center Foundation, Incorporated, and make a report thereof to the General Assembly."

Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in subdivision (1) and throughout subdivision (21). See § 143-344(a).

A provision similar to subdivision (23) of this section was enacted by Session Laws 1973, c. 1463.

Mandamus to Compel Issuance of Warrant. — The duty of the Auditor under subdivision (14) is not a ministerial duty but is one involving judgment and discretion, and mandamus will not lie against him for refusal to issue a warrant for payment of a claim he does not approve. Burton v. Furnam, 115 N.C. 166, 20 S.E. 443 (1894).

Where a clerk of the General Assembly had received a warrant for the entire number of days to which he was entitled, at seven dollars per day, he had no right to a writ of mandamus against the Auditor of the State because he refused to give him a warrant for three dollars per day additional for the same number of days for which he had heretofore obtained a warrant. Boner v. Adams, 65 N.C. 639 (1871).

Report to the General Assembly. — The Auditor of the State is not a mere ministerial officer; when a claim is presented to him against the State, he is to decide whether there is a sufficient provision of law for its payment, and if in his opinion there is not sufficient provision of law, he must examine the claim and report the fact, with his opinion to the General Assembly. Boner v. Adams, 65 N.C. 639 (1871).

Cited in Commerical & Farmers' Bank v. Worth, 117 N.C. 146, 23 S.E. 160 (1895).

§ 147-59. Warrants to bear limitations; presented within 60 days. — All warrants drawn by the State Auditor or any State department, or agency, bureau, or commission on the Treasurer, shall bear, and there shall be printed upon the face thereof in plain type so as to be easily read, the following words, to wit: "This warrant will not be paid if presented to the Treasurer after the expiration of 60 days from the date hereof"; and the State Treasurer is hereby prohibited from paying any warrant drawn by the State Auditor, or any State department, or agency, bureau, or commission, unless the same shall be presented within 60 days from the date of such warrant. (1925, c. 246, s. 1; 1945, c. 496, s. 1.)

Cross Reference. — As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.1, 143-3.2, 147-58(21).

§ 147-60. Surrender of barred warrant; issue of new warrant. — Any person, firm or corporation holding a warrant drawn by the Auditor which cannot be paid because of the provisions of G.S. 147-59 and 147-61 may present the same to the Auditor, and upon satisfactory proof that such person, firm or corporation is the owner thereof and is entitled to have and receive the proceeds of such warrant and that the obligation for which the warrant is drawn is a subsisting obligation against the State of North Carolina, may surrender said warrant to the Auditor and cancel the same, whereupon the Auditor is authorized and empowered to issue another warrant for like amount in lieu thereof; or in his discretion, he may validate the original warrant. (1925, c. 246, s. 2; 1945, c. 496, s. 2; 1951, c. 1010, s. 3.)

Cross Reference. — As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.1, 143-3.2, 147-58(21).

§ 147-61. Warrants issued before March 10, 1925. — Every person, firm or corporation holding a warrant, drawn and issued by the State Auditor prior to March 10, 1925, shall present the same for payment on or before May 1, 1925. If such warrant is not presented to the State Treasurer for payment prior to May 1, 1925, the same shall not be paid, but the holder thereof shall be notified of the provisions of G.S. 147-59, 147-60 and 147-61, and upon satisfactory proof that the holder thereof is the proper owner and is entitled to have and receive the proceeds of such warrant and that the obligation for which the warrant is drawn is a subsisting obligation against the State of North Carolina, the warrant may be surrendered to the Auditor and cancelled and the Auditor is authorized and empowered to issue another and new warrant for like amount in lieu thereof. (1925, c. 246, s. 3.)

Cross Reference. — As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.1, 143-3.2, 147-58(21).

§ 147-62. Assignments of claims against State. — All transfers and assignments made of any claim upon the State of North Carolina or any of its departments, bureaus or commissions or upon any State institution or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor and all powers of attorney, orders or other authorities for receiving payment of any such claim or any part or share thereof shall be absolutely null and void unless such claim has been duly audited and allowed and the amount due thereon fixed and a warrant for the payment thereof has been issued; and no warrant shall be issued to any assignee of any claim or any part or share thereof or interest therein: Provided that this section shall not apply to assignments made in favor of hospitals, building and loan associations, prepaid legal services, and life insurance companies: Provided further, that any employee of the State or of any of its institutions, departments, bureaus, agencies or commissions, who is a member of any credit union organized pursuant to Chapter 54 of the North Carolina General Statutes having a membership at least one half of whom are employed by the State or its institutions, departments, bureaus, agencies or commissions, may authorize, in writing, the periodic deduction from his salary or wages as such employee of a designated lump sum, which shall be paid to such credit unions when said salaries or wages are payable, for deposit to such accounts, purchase of such shares or payment of such obligations as the employee and the credit union may agree: Provided, further, that this section shall not apply to assignments made by members of the State Highway Patrol, agents of the State Bureau of Investigation, motor vehicle inspectors of the Revenue Department, and State prison guards, to the commissioners of the Law-Enforcement Officers' Benefit and Retirement Fund in payment of dues due by such persons to such fund. (1925, c. 249; 1935, c. 19; 1939, c. 61; 1941, c. 128; 1965, c. 1179; 1969, c. 625; 1977, c. 88.)

Local Modification. — Guilford: 1965, c. 216.

Editor's Note. — The 1977 amendment inserted "prepaid legal services" in the first proviso.

As to assignments in general, see 13 N.C. L. Rev. 113, 118.

Deduction from State Employee's Check of Wage Earner's Plan Payments Pursuant to Chapter XIII of the Bankruptcy Act Permissible. — See opinion of Attorney General to Mr. Henry Bridges, State Auditor, 41 N.C.A.G. 277 (1971).

Employee contributions to charitable organizations may not be deducted from the University payroll at the request of the employee for payment to such charitable organization by the University. Opinion of Attorney General to Mr. Clairborne S. Jones, 44 N.C.A.G. 264 (1975).

§ 147-63. Warrants for money paid into treasury by mistake. — Whenever the Governor and Council of State are satisfied that moneys have been paid into the treasury through mistake, they may direct the Auditor to draw his warrant therefor on the Treasurer, in favor of the person who made such payment; but this provision shall not extend to payments on account of taxes nor to payments on bonds and mortgages. (1868-9, c. 270, s. 66; Code, s. 3351; Rev., s. 5366; C. S., s. 7676.)

Cross Reference. — As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.1, 143-3.2, 147-58(21).

§ 147-64. Warrants for surplus proceeds of sale of property mortgaged to State. — Whenever any real property mortgaged to the State, or bought in for the benefit of the State, of which a certificate shall have been given to a former purchaser, is sold by the Attorney General on a foreclosure by notice, or under a judgment, for a greater sum than the amount due to the State, with costs and expenses, the surplus money received into the treasury, after a conveyance has been executed to the purchaser, shall be paid to the person legally entitled to such real property at the time of the foreclosure on the forfeiture of the original contract. The Auditor shall not draw his warrant for such surplus money but upon satisfactory proof, by affidavit or otherwise, of the legal rights of such person. (1868-9, c. 270, s. 68; Code, s. 3352; Rev., s. 5368; C. S., s. 7678.)

Cross Reference. — As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.1, 143-3.2, 147-58(21).

ARTICLE 6.

Treasurer.

§ 147-65. Salary of State Treasurer. — The salary of the State Treasurer shall be the same as for superior court judges as set by the General Assembly in the Budget Appropriation Act. (Code, s. 3723; 1891, c. 505; Rev., s. 2739; 1907, c. 830, s. 3; c. 994, s. 2; 1917, c. 161; 1919, c. 233; c. 247, s. 3; C. S., s. 3868; Ex. Sess. 1920, c. 49, s. 2; 1921, c. 11, s. 1; 1935, c. 249; 1941, c. 1; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 1; 1967, c. 1130; c. 1237, s. 1; 1969, c. 1214, s. 1; 1971, c. 912, s. 1; 1973, c. 778, s. 1; 1975, 2nd Sess., c. 983, s. 16; 1977, c. 802, s. 42.9.)

Cross References.—As to bonds required of State Treasurer, see § 128-8. As to settlement of affairs of inoperative boards and agencies, see §§143-267 through 143-272.

Editor's Note. — The 1975, 2nd Sess., amendment increased the salary from $31,000 to $32,544.

The 1977 amendment rewrote this section, which formerly specified the salary.

Session Laws 1977, c. 802, s. 53, contains a severability clause.

§ 147-66. Office and office hours. — The Treasurer shall keep his office at the City of Raleigh, and shall attend there between the hours of 10 o'clock A.M. and three o'clock P.M., Sundays and legal holidays excepted. He shall be allowed such office room as may be necessary. (1868-9, c. 270, ss. 80, 81; Code, s. 3362; Rev., s. 5369; C. S., s. 7679.)

§ 147-67. Bonds of Treasurer's clerks. — The clerks in the Treasurer's office shall enter into good and sufficient bonds, payable to the State of North Carolina, as provided in G.S. 128-8. These several bonds shall be in addition and cumulative to the official bond of the State Treasurer, and shall not be construed to affect in any way the liability of the State Treasurer upon his official bond. (Rev., s. 289; 1919, c. 8; C. S., s. 7681; 1921, c. 175.)

§ 147-68. To receive and disburse moneys; to make reports. — (a) It is the duty of the Treasurer to receive all moneys which shall from time to time be paid into the treasury of this State; and to pay all warrants legally drawn on the Treasurer by the State Disbursing Officer or the State Auditor or the State Treasurer in the lawful exercise of their duties and responsibilities.

(b) No moneys shall be paid out of the treasury except on warrant of the State Disbursing Officer or the State Auditor or the State Treasurer, and unless there is a legislative appropriation or authority to pay the same.

(c) It shall be the responsibility of the Treasurer to determine that all warrants presented to him for payment are valid and legally drawn on the Treasurer.

(d) The Treasurer shall report to the Governor and Advisory Budget Commission annually and to the General Assembly at the beginning of each biennial session the exact balance in the treasury to the credit of the State, with a summary of the receipts and payments of the treasury during the preceding fiscal year, and so far as practicable an account of the same down to the termination of the current calendar year.

(e) The State Treasurer shall except as provided in G.S. 143-25 be independent of any fiscal control exercise by the Director of the Budget or the Department of Administration and shall be responsible to the Advisory Budget Commission, the General Assembly and the people of North Carolina for the efficient and faithful exercise of the responsibilities of his office. (1868-9, c. 270, s. 71; Code, s. 3356; Rev., s. 5370; C. S., s. 7682; 1955, c. 577; 1957, c. 269, s. 1.)

Cross References. — As to transfer of power to issue warrants upon the State Treasurer from the State Auditor to the Director of the Budget, see §§ 143-3.1, 143-3.2, 147-58(21). As to funds of inoperative boards and agencies, see §§143-267 through 143-272.

Editor's Note. — Pursuant to Session Laws 1957, c. 269, s. 1, "Department of Administration" has been substituted for "Budget Bureau" in subsection (e). See § 143-344(a).

Duty to Pay Warrants. — As it is the duty of the State Treasurer to keep his accounts, showing the transactions of each fiscal year ending December 31, he has no right to pay out money except upon proper warrants drawn upon the proper funds in the treasury. Arendell v. Worth, 125 N.C. 111, 34 S.E. 232 (1899).

The Treasurer is not required to pay any and every warrant which the Auditor may sign, but only those which are legally drawn, and the fact that the Auditor finds that a claim for which he issues a warrant on the Treasurer is authorized by law is not binding upon or a protection to the latter. Commercial & Farmers' Bank v. Worth, 117 N.C. 146, 23 S.E. 160 (1895).

Mandamus for Payment of Warrant. — The State Treasurer is not liable to a mandamus for refusing to pay a warrant improperly drawn, and he is entitled to a mandamus to enforce the drawing of proper warrants upon the proper funds before paying them, as they are his vouchers. Arendell v. Worth, 125 N.C. 111, 34 S.E. 232 (1899).

Mandamus When Fraud Is Alleged. — Where the State Treasurer denies the correctness of a claim audited by the State Auditor and alleges fraud in the creation of the indebtedness or that the services for which a warrant was issued were not rendered, mandamus will not lie to compel him to pay it, the question raised by such claim being for the legislature, and not the courts, to determine. Garner v. Worth, 122 N.C. 250, 29 S.E. 364 (1898).

Mandamus without Warrant. — Mandamus will not lie to compel the Treasurer to pay a claim where the Auditor has not issued a warrant therefor, as the Treasurer can only pay on such warrant. Burton v. Furnam, 115 N.C. 166, 20 S.E. 443 (1894).

Court Compelling Payment of Claim. — The courts cannot direct the State Treasurer to pay a claim against the State, however just and unquestioned, when there is no legislative appropriation to pay the same; and when there is such an appropriation the coercive power is applied not to compel the payment of the State liability but to compel a public servant to discharge his duty by obedience to a legislative enactment. Garner v. Worth, 122 N.C. 250, 29 S.E. 364 (1898).

Applied in Gardner v. Board of Trustees of N.C. Local Governmental Employees' Retirement Sys., 226 N.C. 465, 38 S.E. 2d 314 (1946).

§ 147-69. Deposits of State funds in banks regulated. — Banks having State deposits shall furnish to the Auditor of the State, upon his request, a statement of the moneys which have been received and paid by them on account of the treasury. The Treasurer shall keep in his office a full account of all moneys deposited in and drawn from all banks in which he may deposit or cause to be deposited any of the public funds, and such account shall be open to the inspection of the Auditor. The Treasurer shall sign all checks, and no depository bank shall be authorized to pay checks not bearing his official signature. The Treasurer is authorized to use a facsimile signature machine or device in affixing his signature to warrants, checks or any other instrument he is required by law to sign. No bank shall make any charge for exchange or for the collection of any warrant drawn on the Treasurer or for the transmission of any funds which may come into the hands of the State Treasurer, or any other State department, agency, bureau or commission; provided, that banks organized under the laws of the State of North Carolina may charge for each cashier's check issued to deputy collectors of revenue as a means of transmitting to the Commissioner of Revenue the proceeds of collections of revenue, not over twenty cents (20¢) for each check in the amount of not over one thousand dollars ($1,000), and for each check for an amount in excess of one thousand dollars ($1,000), such banks may charge not over twenty cents (20¢) plus one tenth of one percent ($^1/_{10}$ of 1%) of the amount of such check in excess of one thousand dollars ($1,000). The Commissioner of Banks and the bank examiners, when so required by the State Treasurer, shall keep the State Treasurer fully informed at all times as to the condition of all such depository banks, so as to fully protect the State from loss. The State Treasurer shall, before making deposits in any bank, require ample security from the bank for such deposit. (1905, c. 520; Rev., s. 5371; 1915, c. 168; 1917, c. 159; C. S., s. 7684; 1931, c. 127, s. 1; c. 243, s. 5; 1933, c. 175, s. 1; 1945, c. 644; 1949, c. 1183; 1967, c. 398, s. 2; 1977, c. 401, s. 1.)

Editor's Note. — The 1977 amendment added the present fourth sentence.

For comment on the 1949 amendment to this section, see 27 N.C.L. Rev. 425.

§ 147-69.1. Deposit or investment of surplus State funds; reports of State Treasurer. — It shall be the duty of the State Treasurer, with assistance of the Director of the Budget, on or before the tenth day of each calendar month, and upon request of the Governor or the Council of State at any other time, to carefully analyze the amount of cash in the general fund and in all special funds credited to any special purpose designated by the General Assembly or held to meet the budgets or appropriations for maintenance and permanent improvements of the several institutions, boards, departments, commissions, agencies, persons or corporations of the State. Upon the completion of this analysis the State Treasurer shall determine when in his opinion, the cash in any such funds is in excess of the amount required to meet the current needs and demands on such funds, and report his findings to the Governor and the Council of State. The Governor and the State Treasurer, acting jointly, with the approval of the Council of State, are hereby authorized to invest such excess funds:

(1) In bonds, notes, certificates of indebtedness and bills of the United States of America or in obligations which are fully guaranteed by the United States of America; or

(2) In bonds, notes and other obligations of the Federal Intermediate Credit Banks, the Federal Home Loan Banks, the Federal National Mortgage Association, Banks for Cooperatives, and the Federal Land Banks; or

(3) In bonds and notes of the State of North Carolina; or

(4) In certificates of deposit issued by banks or official depositories within the State of North Carolina, yielding a return at rates not less than those available on United States treasury bonds, notes, certificates of indebtedness or bills of comparable maturities; or

(5) In savings certificates, investment certificates, shares of or deposits in any savings and loan association organized under the laws of this State and savings certificates, investment certificates, shares of or deposits in any federal savings and loan association having its principal office in this State, to the extent that the investment in such certificates, shares or deposits is fully insured by the United States of America or an agency thereof or by any mutual deposit guaranty association authorized by the Administrator of the Savings and Loan Division of the State to do business in North Carolina pursuant to Article 7A of Chapter 54 of the General Statutes, so long as those certificates, shares or deposits yield a return at rates not less than those available on United States treasury bonds, notes, certificates of indebtedness, or bills of comparable maturities.

Notwithstanding the above, if such rates on United States treasury bonds, notes, certificates of indebtedness or bills of comparable maturity are higher than the rates banks or savings and loan associations are permitted to pay by federal or State statutes or regulations and if in the judgment of the Governor and the Council of State it would benefit the economy of the State, such excess funds may be invested in certificates of deposit issued by banks or official depositories within the State of North Carolina at the maximum rate that banks are permitted to pay by federal or State statutes or regulations, or such excess funds may be invested in savings certificates, investment certificates, shares of or deposits in savings and loan associations in the State of North Carolina at the maximum rate that savings and loan associations are permitted to pay by federal or State statutes or regulations. The said funds shall be invested so that in the judgment of the Governor and the State Treasurer they may be readily converted into money at such time as the money will be needed. The interest received on all such deposits and the income from such investments, unless otherwise required by law, shall be paid into the State's general fund; provided, however, that on and after July 1, 1961, all interest accruing on the monthly balance of the highway fund shall be paid to the State Highway Fund.

The State Treasurer shall include in his biennial reports to the General Assembly a full and complete statement of all funds invested by virtue of the provisions of this section, the nature and character of investments therein, and the revenues derived therefrom, together with all such other information as may seem to him to be pertinent for the full information of the General Assembly with reference thereto.

The State Treasurer shall also cause to be prepared a quarterly statement on or before the tenth day of each January, April, July and October in each year. This statement shall show the amount of cash on hand, the amount of money on deposit and the name of each depository, and all investments for which he is in any way responsible. This statement shall be delivered to the Governor as Director of the Budget, and a copy thereof shall be posted in the office of the State Treasurer for the information of the public. (1943, c. 2; 1949, c. 213; 1957, c. 1401; 1961, c. 833, s. 2.2; 1967, c. 398, s. 1; 1969, c. 125; 1975, c. 482.)

Editor's Note. — The 1975 amendment deleted "of the State" following "in the general fund" near the middle of the first sentence of the first paragraph, formed the present second sentence of that paragraph by substituting "Upon the completion of this analysis the State Treasurer shall determine when in his opinion" for "and to determine in his opinion when the cash," added subdivision (5) near the middle of that paragraph, inserted "or savings and loan associations" near the beginning of the first sentence following the subdivisions, added the language beginning "or such excess funds" at the end of that sentence, substituted "be invested so that" for "be so invested that" near the beginning of the next-to-last sentence of that paragraph and deleted "of the State" following "highway fund" near the end of the last sentence of that paragraph.

§ 147-70. To make short-term notes in emergencies. — Subject to the approval of the Governor and Council of State, the State Treasurer is authorized to make short-term notes for temporary emergencies, but such notes must only be made to provide for appropriations already made by the General Assembly. (1915, c. 168, s. 3; C. S., s. 7685.)

§ 147-71. May demand and sue for money and property of State. — The Treasurer is authorized to demand, sue for, collect and receive all money and property of the State not held by some person under authority of law. (1866, c. 46; Code, s. 3359; Rev., s. 5375; C. S., s. 7688.)

§ 147-72. Ex officio treasurer of State institutions; duties as such. — The Treasurer shall be ex officio the treasurer of the Department of Agriculture, of the North Carolina State College of Agriculture and Engineering, of the North Carolina School for the Deaf and Dumb at Morganton, of the North Carolina Institution for the Deaf and Dumb and the Blind at Raleigh, for the State hospitals (for the insane) at Raleigh, Morganton and Goldsboro and for the State's prison. He may appoint deputies to act for him at Morganton and Goldsboro, and may pay such deputies reasonable compensation. He shall keep all accounts of the institutions, and shall pay out all moneys, upon the warrant of the respective chief officers or superintendents, countersigned by two members of the board of directors, managers, or trustees. He shall report to the respective boards at such times as they may call on him, showing the amount received on account of the institution, amount paid out, and amount on hand. He shall perform his duties as treasurer of these several institutions under such regulation as shall be prescribed in each case by their respective boards of managers, trustees or directors, with the approval of the Governor; and shall be responsible on his official bond for the faithful discharge of his duties as treasurer of each of the several institutions. As treasurer of such institutions he shall, annually, after the examination, verification, and cancellation of his vouchers, deposit the same with the respective institutions, and the superintendents thereof shall be responsible for their safekeeping. (1879, c. 240, s. 2; 1881, c. 128; c. 211, s. 9; 1883, c. 156, s. 12; c. 405; Code, ss. 2235, 2251, 3723; 1895, c. 434; 1899, c. 1, s. 11; Rev., s. 5376; 1919, c. 314, s. 6; C. S., s. 7689; 1947, c. 781.)

Editor's Note. — The North Carolina State College of Agriculture and Engineering is now the North Carolina State University at Raleigh. See Session Laws 1963, c. 448, s. 6; 1965, c. 213. And see § 116-4. As to the State schools for the deaf and blind, see §§ 115-321 through 115-334, 115-336 through 115-342.

§ 147-73. Office of treasurer of each State institution abolished. — The office of treasurer of each of the several State institutions of which the State Treasurer is ex officio treasurer is hereby abolished. (1929, c. 337, s. 3.)

§ 147-74. Office of State Treasurer declared office of deposit and disbursement. — The office of the State Treasurer is declared to be an office of deposit and disbursement and only such records and accounts as may be necessary to disclose the accountability of the State Treasurer shall be kept. The purpose of this section is to prevent duplication in account and record keeping and such accounts as may be necessary shall be prescribed by the Director of the Budget under the terms of the Executive Budget Act. (1929, c. 337, s. 2.)

§ 147-75. Deputy to act for Treasurer. — The Treasurer may authorize a deputy to perform any duties pertaining to the office. The Treasurer may authorize a deputy to affix the Treasurer's signature to any check, warrant or any other instrument the Treasurer is required to sign by use of the facsimile signature machine or device during the Treasurer's absence or disability. The Treasurer shall be responsible for the conduct of his deputies. (1868-9, c. 270, s. 76; Code, s. 3358; Rev., s. 5377; C. S., s. 7690; 1977, c. 401, s. 2.)

Editor's Note. — The 1977 amendment rewrote this section.

§ 147-76. Liability for false entries in his books. — If the Treasurer of the State shall wittingly or falsely make, or cause to be made, any false entry or charge in any book by him as Treasurer, or shall wittingly or falsely form, or procure to be formed, any statement of the treasury, to be by him laid before the Governor, the General Assembly, or any committee thereof, or to be by him used in any settlement which he is required to make with the Auditor, with intent, in any of said instances, to defraud the State or any person, such Treasurer shall be guilty of a misdemeanor, and fined, at the discretion of the court, not exceeding three thousand dollars ($3,000), and imprisoned not exceeding three years. (R. C., c. 34, s. 68; Code, s. 1119; Rev., s. 3606; C. S., s. 7691.)

§ 147-77. Daily deposit of funds to credit of Treasurer. — All funds belonging to the State of North Carolina, in the hands of any head of any department of the State which collects revenue for the State in any form whatsoever, and every institution, agency, officer, employee, or representative of the State or any agency, department, division or commission thereof, except officers and the clerks of the Supreme Court and Court of Appeals, collecting or receiving any funds or money belonging to the State of North Carolina, shall daily deposit the same in some bank, or trust company, selected or designated by the State Treasurer, in the name of the State Treasurer, at noon, or as near thereto as may be, and shall report the same daily to said Treasurer: Provided, that the Treasurer may refund the amount of any bad checks which have been returned to the department by the Treasurer when the same have not been collected after 30 days' trial. (1925, c. 128, s. 1; 1945, c. 159; 1969, c. 44, s. 77.)

§ 147-78. Treasurer to select depositories; bond. — The State Treasurer is hereby authorized and empowered to select and designate, wherever necessary, in this State some bank or banks or trust company as an official depository of the State, and the said Treasurer shall require of such depository a bond, or in lieu thereof collateral security for such deposit, consisting of such bonds as are approved for investment by the State sinking fund, as provided for in G.S. 142-31 to 142-43, payable to the State of North Carolina, in a sufficient amount to protect the State on account of any deposit of State funds made therein. (1925, c. 128, s. 2.)

§ 147-79. Deposits of State funds in banks that have provided for safety of deposits without requiring depository bonds. — Where any bank or trust company, State or national, has come within the provisions of the national banking laws, providing guarantee or insurance or security, in full, for the deposits in such bank or trust company, and for payment thereof upon demand of the depositor, and when thereby such protection is afforded depositors of such bank or trust company, and where any such bank or trust company may be properly designated as a depository for the deposits of moneys of the State of North Carolina, or of any county, city, town, or other political subdivision of the State of North Carolina, it shall be permissible and lawful to deposit the moneys of the State, or of such county, city, town or other political subdivision therein, without requiring of the said bank or trust company to furnish any additional security for the protection of such deposits, or the payment thereof upon demand, as now required by law: Provided, however, that the Council of State shall have previously passed upon the character and extent of the guarantee afforded by the United States banking laws, and shall have approved the same as satisfactory: Provided further, that the approval of such bank or trust company as a depository for moneys of the State of North Carolina must be given by the Council of State, and approval by the Local Government Commission must be secured for such bank or trust company to act as a depository for any county, city, town, or other political subdivision of the State: Provided further, that any action in regard to these matters shall be discretionary with the Council of State as far as this section applies to them, and with the Local Government Commission as far as this section applies to it.

Where the deposits are guaranteed or insured only in part, the bank or trust company receiving such deposits shall be required to deposit bonds or security only to the extent of the unguaranteed portion of said deposits. (1933, c. 461, ss. 1, 1½.)

Editor's Note. — See 11 N.C.L. Rev. 201, for review of this section.

§ 147-80. Deposit in other banks unlawful; liability. — It shall be unlawful for any funds of the State to be deposited by any person, institution, or department or agency in any place or bank or trust company, other than those so selected and designated as official depositories of the State of North Carolina by the State Treasurer, and any person so offending or aiding and abetting in such offense shall be guilty of a misdemeanor and punished by a fine or imprisonment, or both, in the discretion of the court, and any person so offending or aiding and abetting in such offense shall also immediately become civilly liable to the State of North Carolina in the amount of the money or funds unlawfully deposited, and, at the instance of the State Treasurer, or at the instance of the Governor, the Attorney General shall forthwith institute the civil action in the name of the State of North Carolina against such person or persons, either in the courts of Wake County, according to their respective jurisdiction, or in the county in which said unlawful deposit has been made, according to the selection made by the officer requesting the institution of such action, for the purpose of recovering the amount of the money so unlawfully deposited, with interest thereon at six percent (6%) per annum, and for the cost of said action, and the court in which said action is tried may also tax, as a part of the cost in said action, to the use of the State of North Carolina, a sum sufficient to reimburse the State of North Carolina for all expense incidental to or connected with the preparation and prosecution of such action. (1925, c. 128, s. 3.)

§ 147-81. Number of depositories; contract. — The State Treasurer is authorized and empowered to select as many depositories in one place and in the State as may appear to him to be necessary and convenient for the various officers, representatives and employees of the State, to comply with the purposes of G.S. 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and may make such contracts with said depositories for the payment of interest on average daily or monthly balances as may appear advantageous to the State in the opinion of such Treasurer and the Governor. (1925, c. 128, s. 4.)

§ 147-82. Accounts of funds kept separate. — In order to preserve and keep them separate, all funds that are now required by law to be kept separate or to be separately administered, both by State departments, institutions, commissions, and other agencies or divisions of the State which collect or receive funds belonging to the State, or funds handled or maintained as trust funds in any form by such department, division or institution shall be evidenced in daily reports by distribution sheets, which shall reflect and show an exact copy of the accounts, showing the distribution of said money kept by such collecting departments, institutions and agencies, and the same shall be entered in the records of the office of the State Treasurer, so as to keep and maintain in the office where the same is first collected or received the same account thereof, and of the distribution thereof, the same records and accounts as are kept in the office of the State Treasurer relating thereto. (1925, c. 128, s. 5.)

§ 147-83. Receipts from federal government and gifts not affected. — General Statutes 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84 shall not be held or construed to affect or interfere with the receipts and disbursements of any funds received by any institution or department of this State from the federal government or any gift or donation to any institution or department of the State or commission or agency thereof when either in the act of Congress, relating to such funds received from the federal government, or in the instrument evidencing the said private donation or gift, a contrary disposition or handling is prescribed or required, and the said sections shall not apply to any moneys paid to any department, institution or agency, or undertaking of the State of North Carolina, as a part of any legislative appropriation, or allotment from any contingent fund, as provided by law, after the same has been paid out of the State treasury. (1925, c. 128, s. 6.)

§ 147-84. Auditor to furnish forms; reports; refund of excess payments. —The State Auditor, by and with the advice, consent and approval of the Governor, shall prescribe and furnish all forms necessary for full compliance with G.S. 147-77, 147-78, 147-80, 147-81, 147-82, 147-83 and 147-84, and the cost of printing and furnishing the same shall be charged in the printing account of the several departments, institutions and agencies receiving and using such forms; and such daily reports shall be made by mail by those departments, institutions and collecting agencies and officers and employees who are not in the City of Raleigh, when required to make such daily deposits and reports; and, in addition to such daily reports, the Treasurer may require a report, as to the amount deposited, by wire, and all such departments, institutions, agencies, officers and employees, who are at or in the City of Raleigh, when required to make such deposits and reports, shall deliver the same, in person or by messenger, to the State Treasurer; whenever taxes of any kind are or have been by clerical error, misinterpretation of the law, or otherwise, collected and paid into the State treasury in excess of the amount found to be legally due the State, the State Auditor shall issue his warrant for the amount so illegally collected, to the person entitled thereto, upon certificate from the head of the department through which said tax was collected, or his successor in the performance of the functions of that department, and the Treasurer shall pay said warrant. (1925, c. 128, s. 7.)

§ 147-85. Fiscal year. — The fiscal year of the State government shall annually close on the thirtieth day of June. The accounts of the Treasurer, the Auditor and the charitable and penal institutions of the State shall be annually closed on that date. (1868-9, c. 270, s. 77; 1883, c. 60; Code, s. 3360; 1885, c. 334;

1905, c. 430; Rev., s. 5378; C. S., s. 7692; 1921, c. 229; Ex. Sess. 1921, c. 7; 1925, c. 89, s. 21.)

Applied in Martin v. Swain County, 201 N.C. 68, 158 S.E. 843 (1931).

§ 147-86. Additional clerical assistance authorized; compensation and duties. — The State Treasurer, by and with the consent and advice of the Governor and Council of State, is authorized to employ an additional clerk in the Treasury Department, whose compensation and duties shall be fixed by the State Treasurer, by and with the consent and advice of the Governor and Council of State. The compensation of such additional clerk as may be employed pursuant to this section shall be paid as other officers and clerks are paid. (1923, c. 172; C. S., s. 7693 (a).)

§ 147-86.1. Pool account for local government unemployment compensation. — (a) The State Treasurer is authorized to establish a pool account, in accordance with rules and regulations of the Employment Security Commission, in cooperation with any one or more units of local government, for the purpose of reimbursing the Employment Security Commission for unemployment benefits paid by the Commission and chargeable to each local unit of government participating in the pool account. In the pool account established pursuant to this section, the funds contributed by a unit of local government shall remain the funds of the particular unit, and interest or other investment income earned by the pool account shall be prorated and credited to the various contributing local units on the basis of the amounts thereof contributed, figured according to an average periodic balance or some other sound accounting principle.

(b) The State Treasurer shall pay to the Employment Security Commission, within 25 days from receipt of a list thereof, all unemployment benefits charged by the Commission to each unit of local government participating in the pool account from the funds in the pool account belonging to each such unit, to the extent that said funds are sufficient to do so.

(c) Notwithstanding the participation by a unit of local government in the pool account authorized by this section, such unit shall remain liable to the Employment Security Commission for any benefits duly charged by the Commission to the unit which are not paid by the State Treasurer from funds in the pool account belonging to the unit. Notwithstanding its participation in the pool account, each unit of local government shall continue to maintain an individual account with the Employment Security Commission.

(d) The Advisory Budget Commission shall be authorized to transfer from the interest earned on the pool account, to the State Treasurer's departmental budget, such funds as may be necessary to defray the Treasurer's cost of administering the pool account. (1977, c. 1124.)

ARTICLE 7.

Secretary of Revenue.

§ 147-87. Secretary of Revenue; appointment; salary. — A Secretary of Revenue shall be appointed by the Governor on January 1, 1933, and quadrennially thereafter. The term of office of the Secretary shall be four years and until his successor is appointed and qualified. His salary shall be fixed by the Governor, with the approval of the Advisory Budget Commission. (1921, c. 40, ss. 2, 6; 1929, c. 232; 1973, c. 476, s. 193.)

Cross Reference. — As to the Department of Revenue, see §§ 143B-217 through 143B-225.

Cited in Boylan-Pearce, Inc. v. Johnson, 257 N.C. 582, 126 S.E.2d 492 (1962).

§ 147-88. Duties as to revenue laws. — In addition to the other duties of the Secretary of Revenue, it shall be his duty to prepare for the legislative committees of the General Assembly such revision of the revenue laws of the State as he may find by experience and investigation expedient to recommend, so that the same may be introduced in the General Assembly and available in printed form for consideration of its members within the first 10 days of the session. (1921, c. 40, s. 5; 1973, c. 476, s. 193.)

ARTICLE 8.

District Attorneys.

§ 147-89. To prosecute cases removed to federal courts. — It shall be the duty of the district attorneys of this State, in whose jurisdiction the circuit and district courts of the United States are held, having first obtained the permission of the judges of said courts, to prosecute, or assist in the prosecution of, all criminal cases in said courts where the defendants are charged with violations of the laws of this State, and have moved their cases from the State to the federal courts under the provisions of the various acts of Congress on such subjects. (1874-5, c. 164, s. 1; Code, s. 1239; Rev., s. 5381; C. S., s. 7696; 1973, c. 47, s. 2.)

Chapter 148.

State Prison System.

Article 1.

Organization and Management.

Sec.
148-1. [Repealed.]
148-2. Prison moneys and earnings.
148-3. Prison property.
148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement.
148-5. Secretary to manage prison property.
148-6. Custody, employment and hiring out of convicts.
148-7. Inspection of mines.
148-8, 148-8.1. [Transferred.]
148-9. [Repealed.]
148-10. Department of Human Resources to supervise sanitary and health conditions of prisoners.
148-10.1. Employment of clinical chaplains for inmates.

Article 2.

Prison Regulations.

148-11. Authority to make regulations.
148-12. Diagnostic and classification programs.
148-13. Rules and regulations as to grades, allowance of time and privileges for good behavior, etc.
148-14 to 148-17. [Repealed.]
148-18. Wages, allowances and loans.
148-19. Health services.
148-20. Corporal punishment of prisoners prohibited.
148-21. [Repealed.]
148-22. Treatment programs.
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148-23. Prison employees not to use intoxicants, narcotic drugs or profanity.
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Article 3.

Labor of Prisoners.

148-26. State policy on employment of prisoners.
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148-27. Women prisoners; limitations on labor of prisoners.
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148-29. Transportation of convicts to prison; sheriff's expense affidavit; State not liable for maintenance expenses until convict received.
148-30. [Repealed.]
148-31. Maintenance of Central Prison; warden; powers and duties.
148-32. [Repealed.]
148-32.1. Local confinement, costs, alternate facilities, parole, work release.
148-33. Prison labor furnished other State agencies.
148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges.
148-33.2. Restitution by prisoners with work-release privileges.
148-34, 148-35. [Repealed.]
148-36. Secretary of Correction to control classification and operation of prison facilities.
148-37. Additional facilities authorized; contractual arrangements.
148-38, 148-39. [Repealed.]
148-40. Recapture of escaped prisoners.
148-41. Recapture of escaping prisoners; reward.
148-42, 148-43. [Repealed.]
148-44. Separation as to sex and age.
148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction.
148-46. Degree of protection against violence allowed.
148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties.
148-47. Disposition of child born of female prisoner.
148-48. Parole powers of Parole Commission unaffected.
148-49. Prison indebtedness not assumed by Board of Transportation.

Article 3A.

Facilities and Programs for Youthful Offenders.

148-49.1 to 148-49.9. [Repealed.]

Article 3B.

Facilities and Programs for Youthful Offenders.

148-49.10. Purposes of Article.

Sec.
148-49.11. Definitions.
148-49.12. Treatment of youthful offenders.
148-49.13. Classification studies.
148-49.14. Sentencing committed youthful offenders.
148-49.15. Parole of committed youthful offenders.
148-49.16. Supervision of paroled youthful offenders and revocation of such parole.

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Paroles.

148-50, 148-51. [Repealed.]
148-51.1. "Board of Paroles" substituted for "Commissioner of Paroles" in statutes.
148-52. [Repealed.]
148-52.1. Prohibited political activities of member of Parole Commission or employee of Department.
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148-54. Parole supervisors provided for; duties.
148-54.1, 148-55. [Repealed.]
148-56. Assistance in supervision of parolees and preparation of case histories.
148-57. Rules and regulations for parole consideration.
148-57.1. Restitution as a condition of parole.
148-58, 148-58.1. [Repealed.]
148-59. Duties of clerks of superior courts as to commitments; statements filed with Department of Correction.
148-60. [Repealed.]
148-60.1. Allowances for paroled prisoner.
148-60.2 to 148-62. [Repealed.]
148-62.1. Entitlement of indigent parolee to counsel, in discretion of Board of Paroles, at revocation hearings.
148-63. Arrest powers of police officers.
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148-65. [Repealed.]

Article 4A.

Out-of-State Parolee Supervision.

148-65.1. Governor to execute compact; form of compact.
148-65.1A. Interstate parole and probation hearing procedures.
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Farming Out Convicts.

148-66. Cities and towns and Board of Agriculture may contract for prison labor.

Sec.
148-67. Hiring to cities and towns and State Board of Agriculture.
148-68. Payment of contract price; interest; enforcement of contracts.
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148-70. Management and care of inmates; prison industries; disposition of products of inmate labor.

Article 5A.

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148-70.1 to 148-70.7. [Repealed.]

Article 6.

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148-71 to 148-73. [Repealed.]

Article 7.

Records, Statistics, Research and Planning.

148-74. Records Section.
148-75. [Repealed.]
148-76. Duties of Records Section.
148-77. Statistics, research, and planning.
148-78. Reports.
148-79. [Repealed.]
148-80. Seal of Records Section; certification of records.
148-81. [Repealed.]

Article 8.

Compensation to Persons Erroneously Convicted of Felonies.

148-82. Provision for compensation.
148-83. Form, requisites and contents of petition; nature of hearing.
148-84. Evidence; action by Parole Commission; payment and amount of compensation.

Article 9.

Prison Advisory Council.

148-85 to 148-88. [Repealed.]

Article 10.

Interstate Agreement on Detainers.

148-89 to 148-95. [Transferred.]
148-96 to 148-100. [Reserved.]

Article 11.

Inmate Grievance Commission.

148-101. Commission established; appointment and terms of members; chairman; vacancies; compensation.
148-102. Appointment and salary of Executive Director, hearing examiners and other personnel.

Sec.
148-103. Removal of members.
148-104. Submission of grievance or complaint.
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148-106. Hearing and disposition by Commission; review by Secretary of Correction.
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148-108. Access to documentary evidence; subpoenas; oaths and affirmations.

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148-109. Right of inmate to appear at hearing; opportunity to call witnesses; representation.
148-110. Record of complaints.
148-111. Conduct of hearing at institutions.
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ARTICLE 1.

Organization and Management.

§ 148-1: Repealed by Session Laws 1973, c. 1262, s. 10.

Cross Reference. — For present provisions as to Department of Correction, see § 143B-260 et seq.

§ 148-2. Prison moneys and earnings. — (a) Persons authorized to collect or receive the moneys and earnings of the State prison system shall enter into bonds payable to the State of North Carolina in penal sums and with security approved by the Department of Correction, conditioned upon the faithful performance by these persons of their duties in collecting, receiving, and paying over prison moneys and earnings to the State Treasurer. Only corporate security with sureties licensed to do business in North Carolina shall be accepted.

(b) All revenues from the sale of articles and commodities manufactured or produced by prison enterprises shall be deposited with the State Treasurer to be kept and maintained as a special revolving working-capital fund designated "Prison Enterprises Fund." The Prison Enterprises Fund shall be used for capital and operating expenditures, including salaries and wages of supervisory personnel, necessary to develop and operate prison industrial and forestry enterprises to provide diversified employment for prisoners. When, in the opinion of the Governor, the Prison Enterprises Fund has reached a sum in excess of requirements for these purposes, the excess shall be used for other purposes within the State prison system or shall be transferred to the general fund as the Governor may direct. (1901, c. 472, s. 7; Rev., s. 5389; C. S., s. 7704; 1923, c. 156; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 2; 1967, c. 996, s. 14; 1973, c. 1262, s. 10.)

§ 148-3. Prison property. — (a) The State Department of Correction shall subject to the provisions of G.S. 143-341, have control and custody of all unexpended surplus highway funds previously allocated for prison purposes and all property of every kind and description now used by or considered a part of units of the State prison system, except vehicles used on a rental basis. The property coming within the provisions of this section shall be identified and agreed upon by the executive heads of the highway and prison systems, or by their duly authorized representatives. The Governor shall have final authority to decide whether or not particular property shall be transferred to the Department of Correction in event the executive heads of the two systems are unable to agree.

(b) Property, both real and personal, deemed by the Department of Correction to be necessary or convenient in the operation of the State prison system may, subject to the provisions of G.S. 143-341, be acquired by gift, devise, purchase, or lease. The Department of Correction may, subject to the provisions of G.S. 143-341, dispose of any prison property, either real or personal, or any interest or estate therein. (1901, c. 472, ss. 2, 6; Rev., s. 5392; C. S., s. 7705; 1925, c. 163; 1933, c. 172, s. 18; 1943, c. 409; 1957, c. 349, s. 3; 1967, c. 996, s. 13.)

Operation of Prison on Particular Site Is Discretionary. — Whether the maintenance and operation of a prison on a particular site shall be conducted either as at present, or as enlarged by the construction of additional buildings and facilities, or as a "minimum security prison," is a matter for determination by the State Prison Commission (now the Department of Correction) in the exercise of its discretion, and the court has no power to substitute its discretion for that of the Commission; and, in the absence of fraud, manifest abuse of discretion or conduct in excess of lawful authority, the court has no power to intervene. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

Hence, the construction of a prison on a site selected by public officials pursuant to statutory authority will not be enjoined. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

§ 148-4. Control and custody of prisoners; authorizing prisoner to leave place of confinement. — The Secretary of Correction shall have control and custody of all prisoners serving sentence in the State prison system, and such prisoners shall be subject to all the rules and regulations legally adopted for the government thereof. Any sentence to imprisonment in any unit of the State prison system, or to jail to be assigned to work under the State Department of Correction, shall be construed as a commitment, for such terms of imprisonment as the court may direct, to the custody of the Secretary of Correction or his authorized representative, who shall designate the places of confinement within the State prison system where the sentences of all such persons shall be served. The authorized agents of the Secretary shall have all the authority of peace officers for the purpose of transferring prisoners from place to place in the State as their duties might require and for apprehending, arresting, and returning to prison escaped prisoners, and may be commissioned by the Governor, either generally or specially, as special officers for returning escaped prisoners or other fugitives from justice from outside the State, when such persons have been extradited or voluntarily surrendered. Employees of departments, institutions, agencies, and political subdivisions of the State hiring prisoners to perform work outside prison confines may be designated as the authorized agents of the Secretary of Correction for the purpose of maintaining control and custody of prisoners who may be placed under the supervision and control of such employees, including guarding and transferring such prisoners from place to place in the State as their duties might require, and apprehending and arresting escaped prisoners and returning them to prison. The governing authorities of the State prison system are authorized to determine by rules and regulations the manner of designating these agents and placing prisoners under their supervision and control, which rules and regulations shall be established in the same manner as other rules and regulations for the government of the State prison system.

The Secretary of Correction may extend the limits of the place of confinement of a prisoner, as to whom there is reasonable cause to believe he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time to

(1) Contact prospective employers; or
(2) Secure a suitable residence for use when released on parole or upon discharge; or
(3) Obtain medical services not otherwise available; or
(4) Participate in a training program in the community; or
(5) Visit or attend the funeral of a spouse, child (including stepchild, adopted child or child as to whom the prisoner, though not a natural parent, has acted in the place of a parent), parent (including a person though not

a natural parent, has acted in the place of a parent), brother, or sister; or

(6) Participate in community-based programs of rehabilitation, including, but not limited to the existing community volunteer and home-leave programs, pre-release and after-care programs as may be provided for and administered by the Secretary of Correction and other programs determined by the Secretary of Correction to be consistent with the prisoner's rehabilitation and return to society.

The willful failure of a prisoner to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary of Correction punishable as provided in G.S. 148-45. (1901, c. 472, s. 4; Rev., s. 5390; C. S., s. 7706; 1925, c. 163; 1933, c. 172, ss. 5, 18; 1935, c. 257, s. 2; 1943, c. 409; 1955, c. 238, s. 2; 1957, c. 349, s. 10; 1959, c. 109; 1965, c. 1042; 1967, c. 996, ss. 13, 15; 1973, c. 902; c. 1262, s. 10; 1977, c. 704, s. 5.)

Editor's Note. — The 1977 amendment inserted "pre-release and after-care programs as may be provided for and administered by the Secretary of Correction" in subdivision (6) of the second paragraph.

Opinions of Attorney General. — Mr. Martin R. Peterson, N.C. Department of Correction, 40 N.C.A.G. 163 (1969).

Power Given to Commissioner or Agents to Designate Places of Confinement. — This section gives the Director of Prisons (now Secretary of Correction) or his duly authorized agents or representatives the authority to designate the places of confinement within the State prison system where the sentences of prisoners shall be served. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

Recommendation of Confinement Not Cruel and Unusual Punishment. — An attachment to commitment papers recommending "that the defendant not be placed upon work release or permitted to leave his place of confinement under this section or any other statute but be kept at all times in close security until the sentence is completed," was a mere recommendation and had no legal effect upon the type or place of incarceration of the petitioner, and it did not constitute cruel and unusual punishment. Harris v. North Carolina, 320 F. Supp. 770 (M.D.N.C. 1970), aff'd, 435 F.2d 1305 (4th Cir. 1971).

Evidence Sufficient to Support Finding of Escape. — The testimony of the State's witness, a sergeant with the North Carolina Department of Correction assigned to the prison camp in which defendant was confined, that on the day in question defendant "was given permission to leave the unit on a Community Volunteer Leave" was sufficient to support the jury's finding, and it was not necessary, as defendant contends, that the State present evidence to show that the Secretary of Correction, after making a determination that there was reasonable cause to believe that defendant would honor his trust, had personally authorized defendant's release to participate in the community volunteer program and had personally prescribed the precise period of time during which the defendant was permitted to be absent from the prison unit. State v. Harris, 27 N.C. App. 15, 217 S.E.2d 729, cert. denied, 288 N.C. 512, 219 S.E.2d 347 (1975).

Applied in Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972); State v. Eppley, 30 N.C. App. 217, 226 S.E.2d 675 (1976).

Stated in Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

Cited in State v. Davis, 253 N.C. 86, 116 S.E.2d 365 (1960); State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969); State v. Stewart, 19 N.C. App. 112, 198 S.E.2d 30 (1973).

§ 148-5. Secretary to manage prison property. — The Secretary of Correction shall manage and have charge of all the property and effects of the State prison system, and conduct all its affairs subject to the provisions of this Chapter and the rules and regulations legally adopted for the government thereof. (1933, c. 172, s. 4; 1955, c. 238, s. 3; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

Cited in Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

§ 148-6. Custody, employment and hiring out of convicts. — The State Department of Correction shall provide for receiving, and keeping in custody until discharged by law, all such convicts as may be now confined in the prison and such as may be hereafter sentenced to imprisonment therein by the several courts of this State. The Department shall have full power and authority to provide for employment of such convicts, either in the prison or on farms leased or owned by the State of North Carolina, or elsewhere, or otherwise; and may contract for the hire or employment of any able-bodied convicts upon such terms as may be just and fair, but such convicts so hired, or employed, shall remain under the actual management, control and care of the Department: Provided, however, that no female convict shall be worked on public roads or streets in any manner. (1895, c. 194, s. 5; 1897, c. 270; 1901, c. 472, ss. 5, 6; Rev., s. 5391; C.S., s. 7707; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Department of Correction Has No Authority on Its Own to Correct Invalid Sentence. — See opinion of Attorney General to Mr. Martin Peterson, Department of Correction, 41 N.C.A.G. 291 (1971).

Predicate of Section. — This section and §§ 148-26 and 148-33.1, as well as provisions with reference to paroles contained in Article 4 of this Chapter, are predicated upon the idea that the ability as well as the disposition of released prisoners to engage in honest employment and become law-abiding members of society is calculated to serve the best interests of the State and of its citizens. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

Stated in State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

§ 148-7. Inspection of mines. — The State Department of Correction is hereby authorized, in its discretion, to have monthly inspection made of all mines in North Carolina in which State convicts are or may be employed and to employ for this purpose the services of an accredited mine inspector approved by the United States Bureau of Mines. (1929, c. 292, ss. 1, 2; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

§ 148-8: Transferred to § 66-58(b)(15) by Session Laws 1975, c. 730, s. 2.

§ 148-8.1: Transferred to § 66-58(b)(16) by Session Laws 1975, c. 730, s. 3.

§ 148-9: Repealed by Session Laws 1973, c. 476, s. 138.

§ 148-10. Department of Human Resources to supervise sanitary and health conditions of prisoners. — The Department of Human Resources shall have general supervision over the sanitary and health conditions of the central prison, over the prison camps, or other places of confinement of prisoners under the jurisdiction of the State Department of Correction, and shall make periodic examinations of the same and report to the State Department of Correction the conditions found there with respect to the sanitary and hygienic care of such prisoners. (1917, c. 286, s. 8; 1919, c. 80, s. 4; C. S., s. 7714; 1925, c. 163; 1933, c. 172, s. 22; 1943, c. 409; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1973, c. 476, s. 128.)

§ 148-10.1. Employment of clinical chaplains for inmates. — The Department of Correction is authorized and directed to employ clinical chaplains to provide moral, spiritual and social counselling and ministerial services to inmates in the custody of the Secretary of the Department of Correction. The Department of Correction shall seek to employ a diversity of qualified persons having differing faiths which are to the extent practicable reflective of the professed religious composition of the inmate population. (1977, c. 950, s. 1.)

ARTICLE 2.

Prison Regulations.

§ 148-11. Authority to make regulations. — The Secretary shall propose rules and regulations for the government of the State prison system, which shall become effective when approved by the Department of Correction. The Secretary shall have such portion of these rules and regulations as pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules and regulations shall be made available to the prisoners. (1873-4, c. 158, s. 15; Code, s. 3444; Rev., s. 5401; C. S., s. 7721; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 4; 1957, c. 349, s. 4; 1967, c. 996, ss. 14, 15; 1973, c. 1262, s. 10.)

This Section Is Constitutional. State v. Revis, 193 N.C. 192, 136 S.E. 346, 50 A.L.R. 98 (1927); State v. Carpenter, 231 N.C. 229, 56 S.E.2d 713 (1949).

The prison rules authorized by this section are administrative and not judicial. State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968).

And Cannot Affect Sentences. — The administrative application of the rules authorized by this section by prison authorities cannot affect sentences imposed by the courts. State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968).

Courts are not authorized to deal with the giving or withholding of privileges or rewards under the rules authorized by this section. State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968).

Immunity of Prison Official from Prosecution. — The fact that disciplinary punishment inflicted on a prisoner by a prison official was administered in accordance with the rules and regulations of the former State Highway and Public Works Commission did not render the prison official immune to prosecution for assault unless the particular regulation relied on was within the statutory authority of the Commission. State v. Carpenter, 231 N.C. 229, 56 S.E.2d 713 (1949).

Applied in State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968).

Cited in State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965); Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-12. Diagnostic and classification programs. — (a) The Department of Correction shall, as soon as practicable, establish diagnostic centers to make social, medical, and psychological studies of persons committed to the Department. Full diagnostic studies shall be made before initial classification in cases where such studies have not been made.

(b) Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

(c) Any prisoner confined in the State prison system while under a sentence of imprisonment imposed upon conviction of a felony shall be classified and treated as a convicted felon even if, before beginning service of the felony sentence, such prisoner has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors. (1917, c. 278, s. 2; 1919, c. 191, s. 2; C. S., s. 7750; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 5; 1959, c. 50; 1967, c. 996, s. 2; 1973, c. 1446, s. 27.)

Editor's Note. — The 1977 amendment, effective July 1, 1978, repealed subsection (b).

Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Session Laws 1977, c. 732, s. 6, provides: "All commitments to the Department of Correction under G.S. 148-49.3 shall be treated as commitments under G.S. 148-12(b)."

Session Laws 1973, c. 803, s. 44, purported to repeal "the third unnumbered paragraph" of this section. The 1973 act apparently intended to amend § 158-12.

Applied in State v. Powell, 11 N.C. App. 194, 180 S.E.2d 490 (1971); State v. Streeter, 17 N.C. App. 48, 193 S.E.2d 347 (1972), aff'd, — N.C. —, 195 S.E.2d 502 (1973).

Cited in State v. Davis, 8 N.C. App. 99, 173 S.E.2d 490 (1970).

§ 148-13. Rules and regulations as to grades, allowance of time and privileges for good behavior, etc. — The rules and regulations for the government of the State prison system may contain provisions relating to grades of prisoners, rewards and privileges applicable to the several classifications of prisoners as an inducement to good conduct, allowances of time for good behavior, the amount of cash, clothing, etc., to be awarded prisoners after their discharge or parole. (1933, c. 172, s. 23; 1935, c. 414, s. 15; 1937, c. 88, s. 1; 1943, c. 409; 1955, c. 238, s. 6.)

Rules as to "Good Time" Rewards Are Strictly Administrative. — Prison rules and regulations respecting rewards and privileges for good conduct ("good time") are strictly administrative and not judicial. State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965); State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968); Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

As Are Grades Established for "Gain Time". — The grades established for "gain time" based on differences in work assignment are matters of prison administration, to be disturbed only if clearly arbitrary or capricious. Ham v. North Carolina, 471 F.2d 406 (4th Cir. 1973).

And Allowance of Gained Time. — Allowance of gained time is a discretionary act of the State prison administrative body, and their decisions as to its allowance will not be upset by the federal courts unless their actions are clearly arbitrary or capricious. Kelly v. North Carolina, 276 F. Supp. 200 (E.D.N.C. 1967).

And Courts Are Not Authorized to Deal with Giving or Withholding Such Rewards. —Giving or withholding of the rewards and privileges under these rules is not a matter with which the courts are authorized to deal. State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965); Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

The giving or withholding of the rewards and privileges under rules and regulations authorized by § 148-11 is not a matter with which the courts are authorized to deal. State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968).

Such Authority Is Vested in Commissioner. —State law vests authority to determine allowance and forfeiture of gained time in the Director of Prisons (now Secretary of Correction) to be exercised in his sound discretion. Patton v. Ross, 267 F. Supp. 387 (E.D.N.C. 1967).

But service on a vacated sentence must be considered in determining defendant's gained time, if any, on account of good behavior. Patton v. Ross, 267 F. Supp. 387 (E.D.N.C. 1967).

Benefits Depend on Conduct. — Whether a prisoner shall benefit by the rules and regulations authorized by § 148-11 depends on his own conduct. State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968).

Nature of Honor-Grade Status, Work-Release Privilege and Parole. — Honor-grade status, work-release privilege, and parole are discretionary acts of grace or clemency extended by the State as a reward for good behavior, conferring no vested rights upon the convicted person. An accused person must be given full constitutional protection before and during his trial, but procedures of constitutional dimension are not appropriate in subsequent determinations of rewards for good behavior while serving a validly imposed sentence of confinement. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

The award of honor-grade status is a discretionary act of the Department of Correction, and its decisions relating to such awards are not subject to procedural due process. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

And Inmate Being So Considered Is Not Entitled to Procedural Due Process. — An inmate being considered for honor-grade status or work release, is not entitled, either under the State or federal Constitutions, to procedural due process rights. Goble v. Bounds, 13 N.C. App.

579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Granting of Such Is Mitigation of Terms of Judgment. — The granting of honor-grade status, work release, and parole is by way of mitigating the terms of the judgment which the court has entered. The legality and propriety of the trial and sentence have already been determined after the prisoner has been heard and his constitutional rights have been accorded him. The merits of the trial and the validity of the judgment may not again be raised before the Department of Correction and the Board of Paroles (now Parole Commission). Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

Which Is Not Undeniable Right of Prisoner. — While a prisoner takes with him into the prison certain rights which may not be denied him, the legal right to the mitigation of his punishment is not one of them. It is contemplated as a part of his rehabilitation that he earn his right to honor-grade status, work release, or parole. The decision is not in the nature of an adversary proceeding under rules of evidence. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

And Involves Policy Decisions to Be Decided by Department of Correction and Board of Paroles. — Whether a prisoner is entitled to honor-grade status, work release, or parole involves policy decisions which should be decided by the Department of Correction and the Board of Paroles (now Parole Commission). These agencies are charged with the duty and are properly given means of discharging it not available to the courts. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

Cited in In re Swink, 243 N.C. 86, 89 S.E.2d 792 (1955); State v. Weaver, 264 N.C. 681, 142 S.E.2d 633 (1965).

§§ 148-14 to 148-17: Repealed by Session Laws 1943, c. 409.

§ 148-18. Wages, allowances and loans. — (a) Prisoners employed in prison enterprises shall be compensated, at rates fixed by the Department of Correction's rules and regulations, for work performed; provided, that no prisoner working for prison enterprises shall be paid more than one dollar ($1.00) per day from funds made available by the Prison Enterprises Fund.

Prisoners employed other than by prison enterprises and those involved in the maintenance and housekeeping of the prison system, shall be compensated at rates fixed by the Department of Correction's rules and regulations; provided, that no prisoner so paid shall receive more than one dollar ($1.00) per day. The source of wages and allowances provided inmates who are not employed by prison enterprises shall be funds provided by the Department of Transportation to the Department of Correction for this purpose.

(b) A prisoner shall be required to contribute to the support of any of his dependents residing in North Carolina who may be receiving public assistance during the period of commitment if funds available to the prisoner are adequate for such purpose. The dependency status and need shall be determined by the department of social services in the county of North Carolina in which such dependents reside.

(c) The Department of Correction shall establish a revolving fund from inmate welfare funds available to the Department to be used for loans to prisoners and parolees in accordance with regulations approved by the Department of Correction. (1935, c. 414, s. 19; 1967, c. 996, s. 3; 1969, c. 982; 1973, c. 1262, s. 10; 1975, c. 506, s. 3; c. 716, s. 7.)

Editor's Note. — The first 1975 amendment divided subsection (a) into two paragraphs and rewrote that subsection.

The second 1975 amendment substituted "Department of Transportation" for "Department of Transportation and Highway Safety" near the end of subsection (a).

Session Laws 1975, c. 682, s. 4, provides: "Nothing in this act shall be construed as altering or amending G.S. 148-26(b) or G.S. 148-18(a) as set out in Chapter 506 of the 1975 Session Laws."

§ 148-19. Health services. — (a) The general policies, rules and regulations of the Department of Correction shall prescribe standards for health services to prisoners, which shall include preventive, diagnostic, and therapeutic measures on both an outpatient and a hospital basis, for all types of patients. A prisoner may be taken, when necessary, to a medical facility outside the State prison system. The Department of Correction shall seek the cooperation of public and private agencies, institutions, officials and individuals in the development of adequate health services to prisoners.

(b) Upon request of the Secretary of Correction, the Secretary of Human Resources may detail personnel employed by the Department of Human Resources to the Department of Correction for the purpose of supervising and furnishing medical, psychiatric, psychological, dental, and other technical and scientific services to the Department of Correction. The compensation, allowances, and expenses of the personnel detailed under this section may be paid from applicable appropriations to the Department of Human Resources, and reimbursed from applicable appropriations to the Department of Correction. The Secretary of Correction may make similar arrangements with any other agency of State government able and willing to aid the Department of Correction to meet the needs of prisoners for health services.

(c) Each prisoner committed to the State Department of Correction shall receive a physical and mental examination by a competent physician as soon as practicable after admission and before being assigned to work. The prisoner's work and other assignments shall be made with due regard for the report of the physician as to the prisoner's physical and mental condition.

(d) The Commission for Mental Health and Mental Retardation Services shall prescribe standards for the delivery of mental health services to inmates in the custody of the Department of Correction. The Commission for Mental Health and Mental Retardation Services shall give the Secretary of Correction an opportunity to review and comment on proposed standards prior to promulgation of such standards; however, final authority to determine such standards remains with the Commission. The Secretary of the Department of Human Resources shall designate an agency or agencies within the Department of Human Resources to monitor the implementation of such standards by the Department of Correction. The Secretary of Human Resources shall send a written report on the progress which the Department of Correction has made on the implementation of such standards to the Governor, the Lieutenant Governor, and the Speaker of the House. Such reports shall be made on an annual basis beginning January 1, 1978. (1917, c. 286, s. 22; C. S., s. 7727; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 4; 1973, c. 476, s. 133; c. 1262, s. 10; 1977, c. 332; c. 679, s. 7.)

Editor's Note. — The first 1977 amendment added subsection (d).

The second 1977 amendment substituted "Commission for Mental Health and Mental Retardation Services" for "Commission for Mental Health Services" in subsection (d).

Additional Examinations. — Whenever there is a change of physical or mental condition, it would seem to logically follow that a further examination is required under this section, yet, the frequency of such examinations must, as a practical matter, be left to the sound discretion of prison authorities. Threatt v. North Carolina, 221 F. Supp. 858 (W.D.N.C. 1963).

§ 148-20. Corporal punishment of prisoners prohibited. — It is unlawful for the Secretary of Correction or any other person having the care, custody, or control of any prisoner in this State to make or enforce any rule or regulation providing for the whipping, flogging, or administration of any similar corporal punishment of any prisoner, or to give any specific order for or cause to be administered or personally to administer or inflict any such corporal punishment. (1917, c. 286, s. 7; C. S., s. 7728; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1963, c. 1174, s. 1; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

Striking Prisoner with Key Ring and Kicking Him into Cell Not Countenanced. — Nothing contained in this section can be said to countenance striking the prisoner with a key ring or kicking him into his cell. Threatt v. North Carolina, 221 F. Supp. 858 (W.D.N.C. 1963).

Whipping formerly permitted. — For construction of section prior to 1963, before which whipping was permitted, see State v. Nipper, 166 N.C. 272, 81 S.E. 164 (1914); State v. Mincher, 172 N.C. 895, 90 S.E. 429 (1916); State v. Revis, 193 N.C. 192, 136 S.E. 346 (1927).

§ 148-21: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-22. Treatment programs. — (a) The general policies, rules and regulations of the Department of Correction shall provide for humane treatment of prisoners and for programs to effect their correction and return to the community as promptly as practicable. Visits and correspondence between prisoners and approved friends shall be authorized under reasonable conditions, and family members shall be permitted and encouraged to maintain close contact with the prisoners unless such contacts prove to be hurtful. Casework, counseling, and psychotherapy services provided to prisoners may be extended to include members of the prisoner's family if practicable and necessary to achieve the purposes of such programs. Education, library, recreation, and vocational training programs shall be developed so as to coordinate with corresponding services and opportunities which will be available to the prisoner when he is released. Programs for the treatment and training of mentally retarded prisoners and other special groups shall be established in segregated sections of facilities housing other prisoners or in separate facilities when this is practicable.

(b) The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs designed to give persons committed to the Department opportunities for physical, mental and moral improvement. The Department may enter into agreements with other agencies of federal, State or local government and with private agencies to promote the most effective use of available resources.

Specifically the Secretary of Correction may enter into contracts or agreements with appropriate public or private agencies offering needed services including health, mental health, rehabilitative or training services for such inmates of the Department of Correction as the Secretary may deem eligible. These agencies shall be reimbursed from applicable appropriations to the Department of Correction for services rendered at a rate not to exceed that which such agencies normally receive for serving their regular clients.

The Secretary may contract for the housing of work-release inmates at county jails and local confinement facilities. Inmates may be placed in the care of such agencies but shall remain the responsibility of the Department and shall be subject to the complete supervision of the Department. The Department may reimburse such agencies for the support of such inmates at a rate not in excess of the average daily cost of inmate care in the corrections unit to which the inmate would otherwise be assigned. (1917, c. 286, s. 15; C. S., s. 7732; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 5; 1975, c. 679, ss. 1, 2; 1977, c. 297.)

Editor's Note. — The 1975 amendment added the second paragraph of subsection (b).

The 1977 amendment divided the former second paragraph of subsection (b) into the present second and third paragraphs, substituted "services including health, mental health, rehabilitative or training services" for "rehabilitative or training services to provide housing sustenance and supervision" in the first sentence of the present second paragraph, added the second sentence of the present second paragraph, and deleted the former fifth sentence of the former second paragraph, which read "Provided that nothing herein contained shall authorize any such contract with the Division of Mental Health."

§ 148-22.1. Educational facilities and programs for selected inmates. — (a) The State Department of Correction is authorized to take advantage of aid available from any source in establishing facilities and developing programs to provide inmates of the State prison system with such academic and vocational education as seems most likely to facilitate the rehabilitation of these inmates and their return to free society with attitudes, knowledge, and skills that will improve their prospects of becoming law-abiding and self-supporting citizens. The State Department of Public Instruction is authorized to cooperate with the State Department of Correction in planning academic and vocational education of prison system inmates, but the State Department of Public Instruction is not authorized to expend any funds in this connection.

(b) In expending funds that may be made available for facilities and programs to provide inmates of the State prison system with academic and vocational education, the State Department of Correction shall give priority to meeting the needs of inmates who are less than 21 years of age when received in the prison system with a sentence or sentences under which they will be held for not less than six months nor more than five years before becoming eligible to be considered for a regular parole. These inmates shall be given appropriate tests to determine their educational needs and aptitudes. When the necessary arrangements can be made, they shall receive such instruction as may be deemed practical and advisable for them. (1959, c. 431; 1967, c. 996, s. 13.)

§ 148-23. Prison employees not to use intoxicants, narcotic drugs or profanity. — No one addicted to the use of intoxicating liquors, or narcotic drugs, shall be employed as superintendent, warden, guard, or in any other position connected with the State Department of Correction, where such position requires the incumbent to have any charge or direction of the prisoners; and anyone holding such position, or anyone who may be employed in any other capacity in the State prison system, who shall come under the influence of intoxicating liquors during hours of employment, or reports for duty under the effect of intoxicants, or narcotic drugs, or who shall become intoxicated, or uses narcotic drugs, under circumstances that bring discredit on the State Department of Correction, shall be subject to immediate dismissal from employment by any of the institutions and shall not be eligible for reinstatement to such position or be employed in any other position in any of the institutions. Any superintendent, warden, guard, supervisor, or other person holding any position in the State Department of Correction who curses a prisoner under his charge shall be subject to immediate dismissal from employment and shall not be eligible for reinstatement. (1917, c. 286, s. 16; 1919, c. 80, s. 8; C. S., s. 7733; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1969, c. 382.)

§ 148-24. Religious services. — The general policies, rules and regulations of the Department of Correction shall provide for religious services to be held in all units of the State prison system on Sunday and at such other times as may be deemed appropriate. Attendance of prisoners at religious services shall be voluntary. The Secretary of Correction shall if possible secure the visits of some minister at the prison hospitals to administer to the spiritual wants of the sick. (1873-4, c. 158, s. 18; 1883, c. 349; Code, s. 3446; Rev., s. 5405; 1915, c. 125, ss. 1, 2; 1917, c. 286, s. 15; C. S., s. 7735; 1925, c. 163; c. 275, s. 6; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 6; 1973, c. 1262, s. 10.)

§ 148-25. Secretary to investigate death of convicts. — The Secretary of Correction, upon information of the death of a convict other than by natural causes, shall investigate the cause thereof and report the result of such investigation to the Governor, and for this purpose the Secretary may administer oaths and send for persons and papers. (1885, c. 379, s. 2; Rev., s. 5409; C. S.,

s. 7746; 1925, c. 163; 1933, c. 172, s. 18; 1955, c. 238, s. 9; 1967, c. 996, s. 15; 1973, c. 1262, s. 10.)

ARTICLE 3.

Labor of Prisoners.

§ 148-26. State policy on employment of prisoners. — (a) It is declared to be the public policy of this State to provide diversified employment for all able-bodied inmates of the State prison system in work for the public benefit that will reduce the cost of their keep while enabling them to acquire or retain skills and work habits needed to secure honest employment after their release.

In exercising his power to enter into contracts to supply inmate labor as provided by this section, the Secretary of Correction shall not assign any inmate to work under any such contract who is eligible for work release as provided in this Article, study release as provided by G.S. 148-4(4), or who is eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, unless suitable work release employment or educational opportunity cannot be found for the inmate, and the inmate is not eligible for a program of vocational rehabilitation services through the State Vocational Rehabilitation Agency, and shall not agree to supply inmate labor for any project or service unless it meets all of the following criteria:

(1) The project or service involves a type of work by which inmates can develop a skill to better equip themselves to return to society;

(2) The project or service is of benefit to the citizens of North Carolina or units of State or local government thereof;

(3) Repealed by Session Laws 1977, c. 824, s. 2.

(4) Wages shall be paid in an amount not exceeding one dollar ($1.00) per day per inmate by the local or State contracting agency.

(b) As many minimum custody prisoners as are available and fit for road work, who cannot appropriately be placed on work release, study release, or other full-time programs, and as many medium custody prisoners as are available, fit for road work and can be adequately guarded during such work without reducing security levels at prison units, shall be employed in the maintenance and construction of public roads of the State. The number and location of prisoners to be kept available for work on the public roads shall be agreed upon by the governing authorities of the Department of Transportation and the State Department of Correction far enough in advance of each budget to permit proper provisions to be made in the request for appropriations submitted by the Department of Transportation. Any dispute between the Departments will be resolved by the Governor. Prisoners so employed shall be compensated, at rates fixed by the Department of Correction's rules and regulations for work performed; provided, that no prisoner working on the public roads under the provisions of this section shall be paid more than one dollar ($1.00) per day from funds provided by the Department of Transportation to the Department of Correction for this purpose.

(c) As many of the male prisoners available and fit for forestry work shall be employed in the development and improvement of state-owned forests as can be used for this purpose by the agencies controlling these forests.

(d) The remainder of the able-bodied inmates of the State prison system shall be employed so far as practicable in prison industries and agriculture, giving preference to the production of food supplies and other articles needed by state-supported institutions or activities.

(e) The State Department of Correction may make such contracts with departments, institutions, agencies, and political subdivisions of the State for the hire of prisoners to perform other appropriate work as will help to make the prisons as nearly self-supporting as is consistent with the purposes of their creation. The Department of Correction may contract with any person or any group of persons for the hire of prisoners for forestry work, soil erosion control, water conservation, hurricane damage prevention, or any similar work certified by the Secretary of Natural Resources and Community Development as beneficial in the conservation of the natural resources of this State. All contracts for the employment of prisoners shall provide that they shall be fed, clothed, quartered, guarded, and otherwise cared for by the Department of Correction. Such work may include but is not limited to work with State or local government agencies in cleaning, construction, landscaping and maintenance of roads, parks, nature trails, bikeways, cemeteries, landfills or other government-owned or operated facilities.

(f) Adult inmates of the State prison system shall be prohibited from working at or being on the premises of any schools or institutions operated or administered by the State Division of Youth Development. (1933, c. 172, ss. 1, 14; 1957, c. 349, s. 5; 1967, c. 996, s. 13; 1971, c. 193; 1973, c. 1262, s. 86; 1975, c. 278; c. 506, ss. 1, 2; c. 682, s. 2; c. 716, s. 7; 1977, c. 771, s. 4; c. 802, s. 25.36; c. 824, ss. 1-3.)

Editor's Note. — The first 1975 amendment added subsection (f).

The second 1975 amendment reinstated subsection (b), which was repealed by the 1971 amendment, and rewrote that subsection.

The third 1975 amendment added the second paragraph in subsection (a).

The fourth 1975 amendment substituted "Department of Transportation" for "Department of Transportation and Highway Safety" two places in subsection (b) and for "State Department of Transportation and Highway Safety" in the second sentence of subsection (b).

The first 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence of subsection (e).

The second 1977 amendment added the language beginning "and as many medium" and ending "levels at prison units" in the first sentence of subsection (b) and deleted "as can be used for this purpose" at the end of that sentence.

The third 1977 amendment substituted "by which inmates can develop a skill to better equip themselves to return to society" for "that inmates are qualified to do" at the end of subdivision (a)(1), deleted subdivision (a)(3), which read "The project or service is not one that would normally be performed by private industry or noninmate labor if inmate labor were not available," and added the fourth sentence of subsection (e).

Session Laws 1975, c. 682, s. 1, provides that this act, which amended this section and added §§ 148-26.1 through 148-26.5 shall be known as the "Inmate Labor Act of 1975."

Session Laws 1975, c. 682, s. 4, provides: "Nothing in this act shall be construed as altering or amending G.S. 148-26(b) or G.S. 148-18(a) as set out in Chapter 506 of the 1975 Session Laws."

Session Laws 1977, c. 771, s. 22, contains a severability clause.

For review of this section and those following, see 11 N.C. L. Rev. 252.

Predicate of Section. — See same catchline in note to § 148-6.

Employment of Prisoners Not Prohibited by Constitution Rewrite. — See opinion of Attorney General to Senator Julian Allsbrook, 41 N.C.A.G. 440 (1971).

Applied in State v. Cooper, 238 N.C. 241, 77 S.E.2d 695 (1953).

Quoted in State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

§ 148-26.1. Definitions. — The following definitions apply:

(1) "Area administrator": The administrator of State prison facilities within one of the areas defined in subdivision (3) of this section.

(2) "Area commission": One of six area inmate labor commissions as defined by G.S. 148-26.2.

(3) "Area command" or "area":

a. This term refers to one of the six geographic areas into which the State is now divided for prison administrative purposes, and is defined only for the purpose of establishing area inmate labor commissions, as provided by G.S. 148-26.2. The definition does not restrict the authority of the Secretary of Correction to change the geographic organization of the Department of Correction.

b. The six geographic areas are as follows:

Western Area. Cherokee, Clay, Graham, Macon, Swain, Jackson, Haywood, Transylvania, Henderson, Buncombe, Madison, Yancey, McDowell, Polk, Rutherford, Mitchell, Burke, Avery, Watauga, Caldwell, Ashe, Alleghany, Wilkes, Alexander, Catawba and Cleveland Counties.

North Piedmont Area. Surry, Stokes, Rockingham, Caswell, Yadkin, Forsyth, Guilford, Alamance, Davie, Davidson and Randolph Counties.

South Piedmont Area. Iredell, Rowan, Lincoln, Gaston, Mecklenburg, Cabarrus, Stanley and Union Counties.

North Central Area. Person, Orange, Durham, Chatham, Lee, Granville, Wake, Vance, Franklin, Johnston, Warren, Northampton, Halifax, Edgecombe, Nash and Wilson Counties.

South Central Area. Anson, Montgomery, Richmond, Moore, Scotland, Hoke, Harnett, Robeson, Cumberland, Bladen, Columbus, Sampson, Brunswick, Pender and New Hanover Counties.

Eastern Area. Wayne, Duplin, Greene, Lenoir, Jones, Onslow, Pitt, Craven, Carteret, Pamlico, Beaufort, Hyde, Martin, Washington, Tyrrell, Dare, Bertie, Hertford, Gates, Chowan, Perquimans, Pasquotank, Camden and Currituck Counties.

(4) "Department head": The head of one of the principal departments of State government, within the meaning of G.S. 143A-2 or 143B-10, or the chancellor of any of the constituent institutions of the University of North Carolina as defined by G.S. 116-2(3).

(5) "Local public work project" or "local public work": A useful service other than the construction of buildings performed on any land, or any structure thereon, belonging to any municipal or county government, including but not limited to parks, campuses, playgrounds, highways, roads, lakes, forests and waterways.

(6) "Principal department" or "department": One of the principal departments of State government enumerated in G.S. 143A-11 and 143B-6 or one of the constituent institutions of the University of North Carolina defined by G.S. 116-2(4).

(7) "Secretary": The Secretary of Correction.

(8) "State public work project" or "State public work": A useful service other than the construction of buildings performed on any land, or any structure thereon, belonging to any principal department of State government as defined in subdivision (6) above, including, but not limited to, State parks, campuses, playgrounds, highways, roads, lakes, forests and waterways.

(9) "Unit superintendent": The superintendent of any State prison unit or camp other than Central Prison, the Correctional Center for Women, Blanch Prison, Craggy Prison, Caledonia Prison and Odom Prison. (1975, c. 682, s. 3.)

Editor's Note. — As to title of this act, see reference to s. 1 of c. 682 in Editor's note under § 148-26.

§ 148-26.2. Area inmate labor commissions. — (a) The area inmate labor commissions are hereby reconstituted. Each reconstituted area commission shall have six members who shall be residents of the area, to be appointed by the

Governor as follows: one representative of the League of Municipalities, one representative of the community colleges and technical institutes in the area, one representative of the Department of Correction designated by the Secretary of Correction and serving as an ex officio member, and three interested and knowledgeable citizens. The members of the commission shall serve for terms commencing upon their appointment and expiring July 1, 1981. Thereafter their successors shall be appointed for terms of four years or until their successors are appointed and qualify. Any appointment to fill a vacancy on an area commission shall be for the remainder of the term of the member causing the vacancy. The Governor shall have the authority to remove any member of an area commission from office for misfeasance, malfeasance or nonfeasance.

(b) Each area commission shall select a chairman from its membership. The chairman shall serve a term of one year.

(c) Each area commission shall meet at least four times per year. The Department of Correction shall provide space for meetings of each area commission at the location of the main office of the area administrator.

(d) The general function of each area commission shall be to encourage the constructive employment of State prison inmates in its area on local public work projects by recommending appropriate projects to the Secretary. Each unit superintendent shall report to the area commission in his area all proposals for the employment of inmates on specific local public work projects that he may develop on his own initiative or that may be suggested to him by any local government, civic organization or citizen of North Carolina. Each area commission shall consider each proposal, including proposals developed by its members, regarding inmate employment in local public work to determine if it meets the criteria provided by G.S. 148-26(a). If the proposal meets the criteria, the area commission shall forward the proposal and its recommendation in writing to the Secretary. The Secretary shall have complete discretion to enter into a contract to provide inmate labor for the proposed local public work. (1975, c. 682, s. 3; 1977, c. 685, s. 1.)

Editor's Note. — As to title of this act, see reference to s. 1 of c. 682 in Editor's note under § 148-26.

The 1977 amendment rewrote subsection (a).

Session Laws 1977, c. 685, s. 3, provides: "The State Inmate Labor Commission shall at their regularly scheduled meetings study the inmate labor programs of other states, in particular the states of Florida and Texas, and make appropriate recommendations to the 1979 General Assembly."

§ 148-26.3. State Inmate Labor Commission. — (a) The State Inmate Labor Commission is hereby reconstituted and shall consist of 10 members as follows: the chairmen of the six area inmate labor commissions as provided in G.S. 148-26.2; one member of the North Carolina House of Representatives to be appointed by the Speaker of the House for a term of two years; one member of the North Carolina Senate to be appointed by the Lieutenant Governor for a term of two years; the Secretary of Correction or his designee to serve as an ex officio member; and a general chairman to be appointed by the Governor for a term commencing upon his appointment and expiring July 1, 1981. Thereafter the general chairman shall be appointed for a term of four years. In the event of the death, resignation or disqualification of the general chairman, the Governor shall appoint a new general chairman to fill the unexpired term. The Governor shall have the authority to remove any member of the Commission for misfeasance, malfeasance or nonfeasance.

(b) The State Inmate Labor Commission shall meet at least four times per year in Raleigh in space provided by the Department of Correction. The general chairman shall act as chairman at all meetings. The general chairman and four other members of the commission shall constitute a quorum for the purpose of doing business.

(c) The State Inmate Labor Commission shall recommend to the Secretary the employment of State prison inmates on specific State public work projects subject to the following procedure:

(1) Any civic organization, area inmate labor commission unit superintendent, or citizen of North Carolina may suggest the employment of inmates on a specific State public work project. The suggestion must be made in writing to the department head of the principal department of State government that owns or is primarily responsible for the State land on which the proposed project is to take place.

(2) The department head may in his discretion submit in written form any proposal regarding inmate employment on a specific State public work project affecting his department, whether the proposal is received from others or developed on his own initiative, to the State Inmate Labor Commission.

(3) The State Inmate Labor Commission shall examine each proposal regarding inmate employment on a specific State public work project, whether the proposal is received from others or developed by Commission members, to determine whether it meets the criteria provided by G.S. 148-26(a). If the proposal meets the criteria, the Commission shall forward the proposal and its recommendation in writing to the Secretary. The Secretary shall have complete discretion to enter into a contract to provide inmate labor for the proposed State public work.

(d) The State Inmate Labor Commission shall advise the Secretary on the employment of State prison inmates, make a written report at least once per year to the Secretary and the General Assembly concerning inmate employment throughout the State, make other reports as the Secretary may require and may submit proposed legislation to the General Assembly concerning inmate employment. (1975, c. 682, s. 3; 1977, c. 685, s. 2.)

Editor's Note. — As to title of this act, see reference to s. 1 of c. 682 in Editor's note under § 148-26.

The 1977 amendment rewrote subsection (a).

Session Laws 1977, c. 685, s. 3, provides: "The State Inmate Labor Commission shall at their regularly scheduled meetings study the inmate labor programs of other states, in particular the states of Florida and Texas, and make appropriate recommendations to the 1979 General Assembly."

§ 148-26.4. Compensation of members of inmate labor commissions. — Members of the area inmate labor commissions and the State Inmate Labor Commission shall receive compensation and expense allowance as provided by G.S. 138-5. (1975, c. 682, s. 3.)

Editor's Note. — As to title of this act, see reference to s. 1 of c. 682 in Editor's note under § 148-26.

§ 148-26.5. Pay and time allowances for work. — The provisions of G.S. 148-18 and 148-13 shall be applicable to inmate work on local or State public work projects contracted for by the Secretary of Correction as provided by G.S. 148-26 through 148-26.4. Travel, cost of inmate wages and custodial supervision expenses incurred by the Department of Correction and arising out of a local or State public work project shall be reimbursed on a cost basis to the

Department of Correction by the local or State contracting agency. (1975, c. 682, s. 3.)

Editor's Note. — As to title of this act, see reference to s. 1 of c. 682 in Editor's note under § 148-26.

§ 148-27. Women prisoners; limitations on labor of prisoners. — The State Department of Correction may provide suitable quarters for women prisoners and arrange for work suitable to their capacity; and the several courts of the State may assign women convicted of offenses, whether felonies or misdemeanors, to these quarters. No woman prisoner shall be assigned to work under the supervision of the State Department of Correction whose term of imprisonment is less than six months, or who is under 16 years of age. (1931, c. 145, s. 32; 1933, c. 39; c. 172, s. 18; 1935, c. 257, s. 3; 1943, c. 409; 1953, c. 1230; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Quarters for Women Provided at Central Prison. — In sentencing a feme defendant convicted of a misdemeanor, the court may designate the place of imprisonment as the quarters provided by the State Highway and Public Works Commission (now State Department of Correction) for women prisoners, and upon a finding that such quarters are maintained in the central prison at Raleigh, order defendant's imprisonment in such quarters at that place. State v. Cagle, 241 N.C. 134, 84 S.E.2d 649 (1954).

Cited in State v. Brown, 252 N.C. 366, 113 S.E.2d 584 (1960).

§ 148-28. Sentencing prisoners to Central Prison; youthful offenders. — When a sentenced offender is to be taken to the Central Prison at Raleigh, a sheriff or other appropriate officer of the county shall cause such prisoner to be delivered with the proper commitment papers to the warden of the Central Prison. A person under 16 years of age convicted of a felony shall not be imprisoned in the Central Prison at Raleigh unless:

(1) The person was convicted of a capital felony; or

(2) He has previously been imprisoned in a county jail or under the authority of the Department of Correction upon conviction of a felony.

This provision shall not limit the authority of the Secretary of Correction from transferring a person under 16 years of age to Central Prison when in the Secretary's determination this person would not benefit from confinement in separate facilities for youthful offenders or when it has been determined that his presence would be detrimental to the implementation of programs designed for the benefit of other youthful offenders. Nor shall this provision limit the authority of the judges of the superior courts of this State or the Secretary of Correction from committing or transferring a person under 16 years of age to Central Prison for medical or psychiatric treatment. (1933, c. 172, s. 7; 1971, c. 691; 1973, c. 1262, s. 10; 1977, c. 711, s. 27.)

Editor's Note. — The 1977 amendment, effective July 1, 1978, in the first sentence, substituted "When a sentenced offender is to be taken to the Central Prison at Raleigh" for language relating to the authority of superior court judges to sentence convicted felons to the Central Prison, deleted "and thereupon" preceding "a sheriff," "Provided, that" from the beginning of the second sentence and "sentenced to or" preceding "imprisoned in," changed the clauses to subdivisions, substituted "The" for "said" at the beginning of present subdivision (1), and added "He" at the beginning of present subdivision (2).

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

As to who could be sentenced to Central Prison, prior to 1977 amendment, see State v. Cagle, 241 N.C. 134, 84 S.E.2d 649 (1954); State v. Floyd, 246 N.C. 434, 98 S.E.2d 478 (1957); State v. Sherron, 4 N.C. App. 386, 166 S.E.2d 836 (1969).

Transfer Pursuant to § 162-39. — Under § 162-39 the trial court, upon making an appropriate finding that it is necessary for the safety of the defendant, can order a defendant transferred to "a unit of the State Prison System designated by the Commissioner of Correction [now Secretary of Correction] or his authorized representative," but the court should not order defendant transferred directly to Central Prison absent a finding that the Central Prison has been properly designated for that purpose by the Commissioner of Correction [now Secretary of Correction] or his authorized representative. State v. Sherron, 4 N.C. App. 386, 166 S.E.2d 836 (1969).

§ 148-29. Transportation of convicts to prison; sheriff's expense affidavit; State not liable for maintenance expenses until convict received. — The sheriff having in charge any prisoner to be taken to the Central Prison at Raleigh shall send him to the Central Prison within five days after the adjournment of the court at which he was sentenced, if no appeal has been taken. The sheriff shall file with the board of commissioners of his county a copy of his affidavit as to necessary guard, together with a copy of his itemized account of expenses, both certified to by the Auditor as true copies of those on file in his office. The State is not liable for the expenses of maintaining convicts until they have been received by the State Department of Correction authorities, nor shall any moneys be paid out of the treasury for support of convicts prior to such reception. (1869-70, c. 180, s. 3; 1870-1, c. 124, s. 3; 1874-5, c. 107, s. 3; Code, ss. 3432, 3437, 3438; Rev., ss. 5398, 5399, 5400; C. S., ss. 7718, 7719, 7720; 1925, c. 163; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1977, c. 711, s. 28.)

Editor's Note. — The 1977 amendment substituted "to be taken" for "sentenced" following "prisoner" in the first sentence.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

Expense of Conveying. — The last sentence of this section only applies to expense of maintenance and does not apply to expense of conveying convicts to the penitentiary. By the acts of 1869-70 it was especially provided that the expense of conveying should be paid by the State and this section did not repeal that act. Taylor v. Adams, 66 N.C. 338 (1872).

§ 148-30: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-31. Maintenance of Central Prison; warden; powers and duties. — The Central Prison shall be maintained in such a manner as to conform to all the requirements of Article 11 of the State Constitution, relating to a State's prison. A suitable person shall be appointed warden of the Central Prison, and he shall succeed to and be vested with all the rights, duties, and powers heretofore vested by law in the superintendent of the State's prison or the warden thereof with respect to capital punishment, or any matter of discipline of the inmates of the prison not otherwise provided for in this Article. (1933, c. 172, s. 14.)

§ 148-32: Repealed by Session Laws 1977, c. 450, s. 2.

Editor's Note. — This section was also repealed by Session Laws 1977, c. 711, s. 33.

§ 148-32.1. Local confinement, costs, alternate facilities, parole, work release. — (a) The Secretary of the Department of Correction is hereby authorized and empowered to contract with local government entities which have under their control local confinement facilities housing prisoners serving sentences of 30 to 180 days. The Secretary of the Department of Correction is authorized and empowered to pay to the appropriate local confinement facility the per diem cost of providing food, clothing, personal items, supervision and necessary medical services to those prisoners serving sentences of 30 to 180 days. Any contract made pursuant to this authority shall be for a period of not more than two years, and shall be renewable biennially for a period not to exceed two years. The financial provisions of the contract shall be approved by the Secretary of the Department of Administration before the contract is executed and shall include a provision setting the per diem rate or reimbursement. The per diem rate of reimbursement shall be based upon consideration of local staff requirements, cost of confinement of other inmates in local confinement facilities, average per diem cost of confinement of inmates in minimum custody facilities in the Department of Correction, and other relevant factors. Such contracts shall take into consideration additional staff and expenses incurred by the local confinement facility.

(b) In the event that the custodian of the local confinement facility certifies in writing to the clerk of the superior court in the county in which said local confinement facility is located that the local confinement facility is filled to capacity, or that the facility cannot reasonably accommodate any more prisoners due to segregation requirements for particular prisoners, or that the custodian anticipates, in light of local experiences, an influx of temporary prisoners at that time, or if the local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221, any judge of the district court in the judicial district where the facility is located, or any judge of the superior court or a special judge of the superior court assigned to hold court in the judicial district where the facility is located may order that the prisoner be transferred to any other qualified local confinement facility within that judicial district. If no such local confinement facility is available, then any such judge may order the prisoner transferred to such camp or facility as the proper authorities of the Department of Correction shall designate, notwithstanding that the term of imprisonment of the prisoner is 180 days or less. In no event, however, shall a prisoner whose term of imprisonment is less than 30 days be assigned or ordered transferred to any such camp or facility.

(c) When a prisoner is assigned to a local confinement facility pursuant to this section, the clerk of the superior court in the county in which the sentence was imposed shall immediately forward a copy of the commitment order to the Parole Commission so that the prisoner will be eligible for misdemeanant parole pursuant to G.S. 148-60.3.

(d) In the event that the prisoner serving a sentence of 30 to 180 days in a local confinement facility is placed on work-release by the sentencing court pursuant to G.S. 148-33.1 (a), the Department of Correction shall be responsible for deducting the appropriate fees from the work-release earnings of the prisoner pursuant to G.S. 148-33.1. In order for the Department of Correction to make the appropriate deductions, it shall be the responsibility of the custodian of the local confinement facility to forward the work-release earnings of the prisoner to the Department of Correction.

(e) Upon entry of a prisoner into a local confinement facility pursuant to this section, the custodian of the local confinement facility shall forward to the Parole Commission information pertaining to the prisoner so as to make him eligible for parole consideration pursuant to G.S. 148-60.3. Such information shall include date of incarceration, jail credit, and such other information as may be required by the Parole Commission. The Parole Commission shall approve a form upon which the custodian shall furnish this information, which form will be provided to the custodian by the Department of Correction. (1977, c. 450, s. 3; c. 925, s. 2.)

Editor's Note. — The 1977 amendment substituted "180 days or less" for "less than 180 days" at the end of the second sentence of subsection (b).

§ 148-33. Prison labor furnished other State agencies. — The State Department of Correction may furnish to any of the other State departments, State institutions, or agencies, upon such conditions as may be agreed upon from time to time between the Department and the governing authorities of such Department, institution or agency, prison labor for carrying on any work where it is practical and desirable to use prison labor in the furtherance of the purposes of any State department, institution or agency, and such other employment as is now provided by law for inmates of the State's prison under the provisions of G.S. 148-6: Provided that such prisoners shall at all times be under the custody of and controlled by the duly authorized agent of such Department. Provided, further, that notwithstanding any provisions of law contained in this Article or in this Chapter, no male prisoner or group of male prisoners may be assigned to work in any building utilized by any State department, agency, or institution where women are housed or employed unless a duly designated custodial agent of the Secretary of Correction is assigned to the building to maintain supervision and control of the prisoner or prisoners working there. (1933, c. 172, s. 30; 1957, c. 349, s. 10; 1961, c. 966; 1967, c. 996, ss. 13, 15; 1973, c. 1262, s. 10.)

Cited in State v. Kimball, 261 N.C. 582, 135 S.E.2d 568 (1964).

§ 148-33.1. Sentencing, quartering, and control of prisoners with work-release privileges. — (a) Whenever a person is sentenced to imprisonment for a term not exceeding five years to be served in the State prison system or a local confinement facility, the Secretary of the Department of Correction may authorize the Director of Prisons or the custodian of the local confinement facility to grant work-release privileges to any such inmate as may be eligible for the program as is hereinafter established. The Secretary of Correction shall authorize immediate work-release privileges for any person serving a sentence not exceeding five years in the State prison system and for whom the presiding judge shall have recommended work-release privileges when (i) it is verified that appropriate employment for the person is available in an area where, in the judgment of the Secretary, the Department of Correction has facilities to which the person may suitably be assigned, and (ii) custodial and correctional considerations would not be adverse to releasing the person without supervision into the free community.

(b) The Parole Commission of this State may authorize the State Department of Correction to grant work-release privileges to any inmate of the State prison system serving a term of greater than five years. If the inmate is not eligible for parole, the Parole Commission shall not authorize the Department of Correction to grant him work-release privileges without considering the recommendations of the presiding judge of the court which imposed the sentence.

(c) The State Department of Correction shall from time to time, as the need becomes evident, designate and adapt facilities in the State prison system for quartering prisoners with work-release privileges. No State or county prisoner shall be granted work-release privileges until suitable facilities for quartering him have been provided in the area where the prisoner has employment or the offer of employment.

(d) The Parole Commission is authorized and directed to establish a work-release plan under which an eligible prisoner may be released from actual custody during the time necessary to proceed to the place of his employment, perform his work, and return to quarters designated by the prison authorities. If the prisoner shall violate any of the conditions prescribed by prison rules and regulations for the administration of the work-release plan, then such prisoner may be withdrawn from work-release privileges, and the prisoner may be transferred to the general prison population to serve out the remainder of his sentence. Rules and regulations for the administration of the work-release plan shall be established in the same manner as other rules and regulations for the government of the State prison system.

(e) The State Department of Labor shall exercise the same supervision over conditions of employment for persons working in the free community while serving sentences imposed under this section as the Department does over conditions of employment for free persons.

(f) Prisoners employed in the free community under the provisions of this section shall surrender to the Department of Correction their earnings less standard payroll deductions required by law. After deducting from the earnings of each prisoner an amount determined to be the cost of the prisoner's keep, the Department of Correction shall retain to his credit such amount as seems necessary to accumulate a reasonable sum to be paid to him when he is paroled or discharged from prison, and shall make such disbursements from any balance of his earnings as may be found necessary by the Department for the following purposes, considered in a priority order as stated:

(1) To pay travel and other expenses of the prisoner made necessary by his employment;
(2) To provide a reasonable allowance to the prisoner for his incidental personal expenses;
(3) To make payments for the support of the prisoner's dependents in accordance with an order of a court of competent jurisdiction, or in the absence of a court order, in accordance with a determination of dependency status and need made by the local department of social services in the county of North Carolina in which such dependents reside;
(3a) To make restitution or reparation to an aggrieved party or parties for the damage or loss occasioned by the offense or offenses committed by the prisoner when such restitution or reparation is imposed as a condition of work-release privileges pursuant to the provisions of G.S. 148-33.2.
(4) To comply with an order from any court of competent jurisdiction regarding the payment of an obligation of the prisoner in connection with any case before such court.

In addition, the Department of Correction in its discretion may grant a request made in writing by the prisoners for a withdrawal for any other purpose.

Any balance of his earnings remaining at the time the prisoner is released from prison shall be paid to him. The Social Services Commission is authorized to promulgate uniform rules and regulations governing the duties of county social services departments under this section.

(g) No prisoner employed in the free community under the provisions of this section shall be deemed to be an agent, employee, or involuntary servant of the State prison system while working in the free community or going to or from such employment.

(h) Any prisoner employed under the provisions of this section shall not be entitled to any benefits under Chapter 96 of the General Statutes entitled "Employment Security" during the term of the sentence.

(i) No recommendation for work release shall be made at the time of sentencing in any case in which the presiding judge shall suspend the imposition of sentence and place a convicted person on probation; however, if probation be subsequently revoked and the active sentence of imprisonment executed, the court may at that time recommend work release. Neither a recommendation for work release by the court or the decision of the Secretary of Correction to place a person on work release shall give rise to any vested statutory right to an individual to be placed on or continued on work release. (1957, c. 540; 1959, c. 126; 1961, c. 420; 1963, c. 469, ss. 1, 2; 1967, c. 684; c. 996, s. 13; 1969, c. 982; 1973, c. 476, s. 138; c. 1262, s. 10; 1975, c. 22, ss. 1-3; c. 679, s. 3; 1977, c. 450, ss. 4, 5; c. 614, s. 6; c. 623, ss. 1, 2; c. 711, s. 29.)

Editor's Note. — The first 1975 amendment rewrote subsection (a) and substituted "a term of greater than five years" for "a term of imprisonment" and "Provided, that if the inmate thus" for "Provided, in any case where the inmate" in subsection (b). The amendment also deleted the former second sentence of subsection (d), which provided for work-release privileges only upon recommendation of the presiding judge or written authorization of the Parole Commission.

The second 1975 amendment deleted in subsection (c) the second sentence, which related to contracts with political subdivisions for the quartering in local facilities of prisoners with work-release privileges.

The first 1977 amendment inserted "or local confinement facility," "or the custodian of the local confinement facility" and "is" preceding "hereinafter established" in the first sentence of subsection (a), and inserted "State or county" in the second sentence of subsection (c). The first 1977 amendment also amended the second sentence of subsection (a) to read as follows: "The Department of Correction or the custodian of the local confinement facility, upon recommendation of the presiding judge, shall immediately issue temporary work-release privileges to any inmate so recommended upon verification of employment or at such time after commitment to the Department of Correction or to a local confinement facility as employment can be obtained and verified."

The second 1977 amendment added subdivision (3a) of subsection (f).

The third 1977 amendment rewrote the second sentence of subsection (a) to read as set out above and added subsection (i).

The fourth 1977 amendment divided subsection (b) into two sentences and substituted "If the inmate is not eligible for parole" for "Provided, that if the inmate thus being considered for work-release privileges has not yet served a fourth of his sentence if determinate or a fourth of his minimum sentence if indeterminate" at the beginning of the present second sentence.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 614, s. 9, and c. 711, s. 36, contain severability clauses.

Opinions of Attorney General. — Mr. Martin R. Peterson, N.C. Department of Correction, 40 N.C.A.G. 539 (1969).

Constitutionality. — See Advisory Opinion In re Work-Release Statute, 268 N.C. 727, 152 S.E.2d 225 (1966).

Predicate of Section. — See same catchline in note to § 148-26.

Nature of Honor-Grade Status, Work-Release Privilege and Parole. — Honor-grade status, work-release privilege, and parole are discretionary acts of grace or clemency extended by the State as a reward for good behavior, conferring no vested rights upon the convicted person. An accused person must be given full constitutional protection before and during his trial, but procedures of constitutional dimension are not appropriate in subsequent determinations of rewards for good behavior while serving a validly imposed sentence of confinement. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Authority to Grant Work-Release Privileges for Inmates Serving Terms Greater Than Five Years. — Subsection (b) of this section read in conjunction with § 143B-266(b) makes it clear that all releasing authority for work-release privileges for any inmate serving a term greater than five years rests ultimately in the Parole Commission. State v. Walker, 31 N.C. App. 199, 228 S.E.2d 772 (1976).

Authority to Grant Work-Release Privileges for Inmates Serving Indeterminate Sentences or Sentences Exceeding Five Years. — Under G.S. 148-33.1(a), the Department of Correction is not authorized to place on Work Release, without Parole Commission approval, an inmate with an indeterminate sentence of five to ten years (or with any maximum sentence in excess of five years). Opinion of Attorney General to Mr. Jack Scism, 45 N.C.A.G. (1975).

Recommending Privilege of Work-Release Program. — Subsection (b) authorizes but does not require the presiding judge of the sentencing court to recommend that the prisoner be granted the privilege of the work-release program. State v. Wright, 272 N.C. 264, 158 S.E.2d 50 (1967); Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Granting Work-Release Privileges Not Required. — Subsection (b) authorizes but does not require the Board of Paroles (now Parole Commission) to authorize the Department of Correction to grant work-release privileges to any inmate of the prison system provided that the stated conditions in the statute are met. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Decisions Are Discretionary Acts. — The decisions of the trial court and the Board of Paroles (now Parole Commission) relating to the work-release privilege are discretionary acts and are not subject to procedural due process. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

And Inmate Being So Considered Is Not Entitled to Procedural Due Process. — An inmate being considered for honor-grade status or work release, is not entitled, either under the State or federal Constitutions, to procedural due process rights. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Granting of Honor-Grade Status, etc., Is Mitigation of Terms of Judgment. — The granting of honor-grade status, work release, and parole is by way of mitigating the terms of the judgment which the court has entered. The legality and propriety of the trial and sentence have already been determined after the prisoner has been heard and his constitutional rights have been accorded him. The merits of the trial and the validity of the judgment may not again be raised before the Department of Correction and the Board of Paroles (now Parole Commission). Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

Which Is Not Undeniable Right of Prisoner. — While a prisoner takes with him into the prison certain rights which may not be denied him, the legal right to the mitigation of his punishment is not one of them. It is contemplated as a part of his rehabilitation that he earn his right to honor-grade status, work release, or parole. The decision is not in the nature of an adversary proceeding under rules of evidence. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

And Involves Policy Decisions to Be Decided by Department of Correction and Board of Paroles. — Whether a prisoner is entitled to honor-grade status, work release, or parole involves policy decisions which should be decided by the Department of Correction and the Board of Paroles (now Parole Commission). These agencies are charged with the duty and are properly given means of discharging it not available to the courts. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

Quoted in State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969).

Cited in State v. Vandiver, 265 N.C. 325, 144 S.E.2d 54 (1965); State v. Hunt, 265 N.C. 714, 144 S.E.2d 890 (1965).

§ 148-33.2. Restitution by prisoners with work-release privileges. — (a) As a rehabilitative measure, the Secretary of the Department of Correction and the Parole Commission are authorized and empowered to impose as a condition of attaining work-release privileges that the prisoner make restitution or reparation to an aggrieved party or parties for the damage or loss occasioned by the offense or offenses committed by the prisoner when such restitution or reparation is ordered as a condition of attaining work-release privileges pursuant to a plea arrangement made under provisions of G.S. 15A-1021. The Secretary and the Parole Commission shall implement the order of the sentencing court, but, if due to the disability of the prisoner, or for other causes, such order cannot be reasonably implemented, the Secretary and the Parole Commission shall state in writing why they cannot reasonably implement the order, and forward the written statement to the sentencing court. The sentencing court shall consider the written statement, and shall issue such further orders as it may deem necessary.

(b) As a rehabilitative measure, the Secretary of the Department of Correction and the Parole Commission are further authorized and empowered to impose as a condition of attaining work-release privileges that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition of attaining work-release privileges. The Secretary and the Parole Commission shall not be bound by such recommendation, but if they elect not to implement the recommendation, they shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a further rehabilitative measure, restitution or reparation should be ordered or recommended to the Parole Commission and the Secretary of Correction to be imposed as a condition of attaining work-release privileges. If the court determines that restitution or reparation should not be ordered or recommended as a condition of attaining work-release privileges, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of attaining work-release privileges, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15-199(10). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(d) The Secretary of the Department of Correction and the Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that restitution or reparation is being considered as a condition of work release, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the order or recommendation of the sentencing court. (1977, c. 614, s. 7.)

Editor's Note. — Session Laws 1977, c. 614, s. 9, contains a severability clause.

§§ 148-34, 148-35: Repealed by Session Laws 1957, c. 349, s. 11.

§ 148-36. Secretary of Correction to control classification and operation of prison facilities. — All facilities established or acquired by the State Department of Correction shall be under the administrative control and direction of the Secretary of Correction, and operated under rules and regulations proposed by the Secretary and adopted by the Department of Correction as provided in G.S. 148-11. Subject to such rules and regulations, the Secretary shall classify the facilities of the State prison system and develop a variety of programs so as to permit proper segregation and treatment of prisoners according to the nature of the offenses committed, the character and mental condition of the prisoners, and such other factors as should be considered in providing an individualized system of discipline, care, and correctional treatment of persons committed to the Department. The Secretary of Correction, or his authorized representative, shall designate the places of confinement where sentences to imprisonment in the State's prison system shall be served. The Secretary or his representative may designate any available facility appropriate for the individual in view of custodial and correctional considerations. (1931, c.

145, s. 28; c. 277, s. 8; 1933, c. 46, ss. 3, 4; c. 172, ss. 4, 17; 1943, c. 409; 1955, c. 238, s. 7; 1957, c. 349, s. 10; 1967, c. 996, s. 7; 1973, c. 1262, s. 10.)

§ 148-37. Additional facilities authorized; contractual arrangements. — (a) Subject to the provisions of G.S. 143-341, the State Department of Correction may establish additional facilities for use by the Department, such facilities to be either of a permanent type of construction or of a temporary or movable type as the Department may find most advantageous to the particular needs, to the end that the prisoners under its supervision may be so distributed throughout the State as to facilitate individualization of treatment designed to prepare them for lawful living in the community where they are most likely to reside after their release from prison. For this purpose, the Department may purchase or lease sites and suitable lands adjacent thereto and erect necessary buildings thereon, or purchase or lease existing facilities, all within the limits of allotments as approved by the Department of Administration.

(b) The Secretary of Correction may contract with the proper official of the United States or of any county or city of this State for the confinement of federal prisoners after they have been sentenced, county, or city prisoners in facilities of the State prison system or for the confinement of State prisoners in federal, county or city facilities located in North Carolina, when to do so would most economically and effectively promote the purposes served by the Department of Correction. Any contract made under the authority of this section shall be for a period of not more than two years, and shall be renewable from time to time for a period not to exceed two years. Contracts for receiving federal, county, and city prisoners shall provide for reimbursing the State in full for all costs involved. The financial provisions shall have the approval of the Department of Administration before the contract is executed. Payments received under such contracts shall be deposited in the State treasury for the use of the State Department of Correction. Such payments are hereby appropriated to the State Department of Correction as a supplementary fund to compensate for the additional care and maintenance of such prisoners as are received under such contracts. (1933, c. 172, s. 19; 1957, c. 349, s. 10; 1967, c. 996, s. 8; 1973, c. 1262, s. 10; 1975, c. 879, s. 46.)

Editor's Note. — The 1975 amendment deleted "the Budget Division of" preceding "the Department of Administration" at the end of subsection (a).

§§ 148-38, 148-39: Repealed by Session Laws 1957, c. 349, s. 11.

§ 148-40. Recapture of escaped prisoners. — The rules and regulations for the government of the State prison system may provide for the recapture of convicts that may escape, or any convicts that may have escaped from the State's prison or prison camps, or county road camps of this State, and the State Department of Correction may pay to any person recapturing an escaped convict such reward or expense of recapture as the regulations may provide. Any citizen of North Carolina shall have authority to apprehend any convict who may escape before the expiration of his term of imprisonment whether he be guilty of a felony or misdemeanor, and retain him in custody and deliver him to the State Department of Correction. (1933, c. 172, s. 21; 1955, c. 238, s. 8; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Applied in Davis v. North Carolina, 196 F. Supp. 488 (E.D.N.C. 1961), rev'd on other grounds, 310 F.2d 904 (4th Cir. 1962).

Quoted in State v. Davis, 253 N.C. 86, 116 S.E.2d 365 (1960).

Cited in State v. Payne, 213 N.C. 719, 197 S.E. 573 (1938).

§ 148-41. Recapture of escaping prisoners; reward. — The Secretary of Correction shall use every means possible to recapture, regardless of expense, any prisoners escaping from or leaving without permission any of the State prisons, camps, or farms. When any person who has been confined or placed to work escapes from the State prison system, the Secretary shall immediately notify the Governor, and accompany the notice with a full description of the escaped prisoner, together with such information as will aid in the recapture. The Governor may offer such rewards as he may deem desirable and necessary for the recapture and return to the State prison system of any person who may escape or who heretofore has escaped therefrom. Such reward earned shall be paid by warrant of the State Department of Correction and accounted for as a part of the expense of maintaining the State's prisons. (1873-4, c. 158, s. 13; Code, s. 3442; Rev., s. 5407; 1917, c. 236; c. 286, s. 13; C. S., ss. 7742, 7743; 1925, c. 163; 1933, c. 172, s. 18; 1935, c. 414, s. 16; 1943, c. 409; 1955, c. 238, s. 9; c. 279, s. 3; 1957, c. 349, s. 10; 1967, c. 996, ss. 13, 15; 1973, c. 1262, s. 10.)

§ 148-42: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-43: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-44. Separation as to sex and age. — The Department shall provide quarters for female prisoners separate from those for male prisoners; and shall provide for separate facilities for youthful offenders as required by G.S. 15-210 to 15-215. (1933, c. 172, s. 25; 1947, c. 262, s. 2; 1957, c. 349, s. 10; 1963, c. 1174, s. 2.)

Editor's Note. — Sections 15-210 through 15-215 were repealed by Session Laws 1967, c. 996, s. 17. As to facilities and programs for youthful offenders, see now §§ 148-49.10 through 148-49.16.

Quoted in Swann v. Charlotte-Mecklenburg Bd. of Educ., 318 F. Supp. 786 (W.D.N.C. 1970).

§ 148-45. Escaping or attempting escape from State prison system; failure of conditionally and temporarily released prisoners and certain youthful offenders to return to custody of Department of Correction. — (a) Any person in the custody of the Department of Correction in any of the classifications hereinafter set forth who shall escape or attempt to escape from the State prison system, shall for the first such offense, except as provided in subsection (g) of this section, be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not less than three months nor more than one year:

(1) A prisoner serving a sentence imposed upon conviction of a misdemeanor;

(2) A person who has been charged with a misdemeanor and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) A person who shall have been convicted of a misdemeanor and who shall have been committed to the custody of the Department of Correction pending appeal under the provisions of G.S. 15-183; or

(4) A person who shall have been convicted of a misdemeanor and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 148-12(b).

(b) Any person in the custody of the Department of Correction, in any of the classifications hereinafter set forth, who shall escape or attempt to escape from the State prison system, shall for the first such offense, except as provided in subsection (g) of this section, be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than two years:

(1) A prisoner serving a sentence imposed upon conviction of a felony;

(2) A person who has been charged with a felony and who has been committed to the custody of the Department of Correction under the provisions of G.S. 162-39;

(3) A person who shall have been convicted of a felony and who shall have been committed to the custody of the Department of Correction pending appeal under the provisions of G.S. 15-183; or

(4) A person who shall have been convicted of a felony and who shall have been committed to the Department of Correction for presentence diagnostic study under the provisions of G.S. 148-12(b).

(c) Any person convicted of escaping or attempting to escape from the State prison system who at any time subsequent to such conviction escapes or attempts to escape therefrom, shall be guilty of a felony and upon conviction thereof, shall be punished by imprisonment for not less than six months nor more than three years.

(d) Any person who aids or assists other persons to escape or attempt to escape from the State prison system shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned at the discretion of the court.

(e) Any term of imprisonment imposed hereunder shall commence at the termination of any and all sentences to be served in the State prison system under which the person is held at the time an offense defined by this section is committed by such person. Persons charged with the offense of escape or attempt to escape under the provisions of this section shall not be entitled to plea conference consideration as provided in G.S. 15A-1021.

(f) Any person convicted of an escape or attempt to escape classified as a felony by this section shall be immediately classified and treated as a convicted felon even if such person has time remaining to be served in the State prison system on a sentence or sentences imposed upon conviction of a misdemeanor or misdemeanors.

(g) (1) Any person convicted and in the custody of the North Carolina Department of Correction and ordered or otherwise assigned to work under the work-release program, G.S. 148-33.1, or any convicted person in the custody of the North Carolina Department of Correction and on temporary parole by permission of the State Parole Commission or other authority of law or any youthful offender granted relief under G.S. 148-49.1 et seq., who shall fail to return to the custody of the North Carolina Department of Correction, shall be guilty of the crime of escape and subject to the applicable provisions of this section and shall be deemed an escapee. For the purpose of this subsection, escape is defined to include, but is not restricted to, willful failure to return to an appointed place and at an appointed time as ordered.

(2) If a person, who would otherwise be guilty of a first violation of G.S. 148-45(g)(1), voluntarily returns to his place of confinement within 24 hours of the time at which he was ordered to return, such person shall not be charged with an escape as provided in this section but shall be subject to such administrative action as may be deemed appropriate for an escapee by the Department of Correction; said escapee shall not be allowed to be placed on work release for a four-month period or for the balance of his term if less than four months; provided, however, that if such person commits a subsequent violation of this section then such person shall be charged with that offense and, if convicted, punished under the provisions of this section. (1933, c. 172, s. 26; 1955, c. 279, s. 2; 1963, c. 681; 1965, c. 283; 1967, c. 996, s. 13; 1973, c. 1120; c. 1262, s. 10; 1975, cc. 170, 241, 705; c. 770, ss. 1, 2; 1977, c. 732, ss. 3, 4; c. 745.)

Editor's Note. — The first 1975 amendment substituted "run concurrently with all former sentences remaining to be served" for "commence at the termination of any and all sentences to be served in the State prison system under which the person is held at the time an offense defined by this section is committed by such person" at the end of subsection (e).

The second 1975 amendment designated the former provisions of subsection (g) as subdivision (1) and added subdivision (2) in subsection (g).

The third 1975 amendment corrected a clerical error in Session Laws 1975, c. 241, by substituting "four months" for "one year" near the end of subdivision (2) of subsection (g).

The fourth 1975 amendment inserted "except as provided in subsection (g) of this section" near the beginning of subsection (a) and made the same insertion near the beginning of subsection (b).

The first 1977 amendment deleted "or 148-49.3" from the end of subdivisions (a)(4) and (b)(4).

The second 1977 amendment rewrote subsection (e).

Session Laws 1955, c. 279, which rewrote what is now subsection (a) of this section, provides, in s. 4: "The provisions of this act shall be construed to be mandatory rather than directive."

Subsection (b) of § 148-12, referred to in subdivision (4) of subsections (a) and (b), was repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978. Section 148-49.1 et seq., referred to in subdivision (1) of subsection (g), was repealed by Session Laws 1977, c. 732, s. 1. For present provisions covering the subject matter of the repealed sections, see § 148-49.10 et seq.

For note on the availability of the defense of duress in prison escapes, see 12 Wake Forest L. Rev. 1102 (1976).

For construction of former provisions similar to subsection (g)(1) of this section, see State v. Kimball, 261 N.C. 582, 135 S.E.2d 568 (1964); State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969); State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

There Are Two Classes of Escape from the State Prison System. One is a felonious escape and the other is a misdemeanor. State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

Prisoners Hired by Highway Commission (now Board of Transportation) Are within Prison System. — Prisoners hired by the State Highway Commission (now the Board of Transportation) to work on the highways of the State are within the prison system when the agents of the Highway Commission (now the Board of Transportation) have been designated to receive and work such prisoners. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

An escape by a prisoner assigned by an official of the Department of Correction to work under an employee of the State Highway Commission (now Board of Transportation) constitutes an escape from the State prison system. State v. Coleman, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

An Escape from Custody Authorized by Law Is a Crime against Public Justice. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

Citizen Should Yield Obedience to Law. — The statute declaring escape from custody to be an offense proceeds from the theory that a citizen should yield obedience to the law. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

Thus, Person Confined by Law Must Submit. — When one has been, by authority or command of the law, confined in prison, it is his duty to submit to such confinement until delivered by due course of law, no matter whether he has been committed for a future trial, or for punishment after conviction. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

It would bring the law into disrepute and completely render prison order and discipline unenforceable if prisoners convicted of crime could exercise the right of self-judgment and self-help and be allowed to escape from imprisonment, either because they believe themselves to be innocent, or that their convictions were obtained through legal error.

State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

He Is Liable for Escape Whether Innocent or Not. — It is generally held by the more modern authorities that it is immaterial whether a prisoner is innocent or guilty of the original offense insofar as his liability for escaping is concerned. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

When a prisoner is held in legal custody and commits an escape, the crime itself does not depend upon whether he would have been adjudged guilty or innocent of the original offense had the proper procedure for appeal been followed. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

And Whether or Not Conviction Is Later Held Void. — The crime of escape does not depend upon whether it may or may not be determined in a future habeas corpus proceeding that his original conviction was void for defects in the judgment of conviction by a court of competent jurisdiction. State v. Goff, 264 N.C. 563, 142 S.E.2d 142 (1965).

There is no deprivation of federal constitutional rights in the State's trial of a prisoner for an escape from an invalid sentence. Kelly v. North Carolina, 276 F. Supp. 200 (E.D.N.C. 1967).

A defendant can be tried and sentenced on the charge of escape irrespective of the outcome of a new trial. State v. Warren, 4 N.C. App. 441, 167 S.E.2d 858 (1969).

North Carolina has held that a prisoner escaping while serving a sentence is not immune to punishment for the escape even though the sentence he was serving at the time of the escape was irregular or voidable and is set aside and a new trial ordered after the escape but prior to imposition of sentence for the escape, since a prisoner serving a sentence imposed by authority of law may not defy that authority but must seek redress in compliance with due process. Kelly v. North Carolina, 276 F. Supp. 200 (E.D.N.C. 1967).

The deprivation of procedural rights before or during imprisonment does not constitute grounds for, or justification for, an escape by a prisoner serving a sentence imposed by authority of law. This is so even though the sentence the prisoner was serving at the time was later held to be irregular or voidable. A prisoner in such case may not put himself in defiance of the duly constituted authorities by escaping from custody but must seek redress in compliance with due process. State v. Warren, 4 N.C. App. 441, 166 S.E.2d 858 (1969).

A second escape is a felony, punishable by imprisonment for not less than six months nor more than three years, irrespective of whether the original sentence was imposed upon conviction of a misdemeanor or of a felony. State v. Worley, 268 N.C. 687, 151 S.E.2d 618 (1966); State v. Walters, 17 N.C. App. 94, 193 S.E.2d 316 (1972).

A second escape is a felony, even though the first escape came at a time when the prisoner was serving another sentence. State v. Stone, 22 N.C. App. 352, 206 S.E.2d 389 (1974).

The intent of the General Assembly was to declare a second offense of escape, or attempted escape, a felony regardless of the time elapsing or events occurring between the two offenses. State v. Stone, 22 N.C. App. 352, 206 S.E.2d 389 (1974).

A Murder Committed in the Perpetration or Attempt to Perpetrate a Felonious Escape Is Murder in the First Degree. State v. Lee, 277 N.C. 205, 176 S.E.2d 765 (1970).

Sufficiency of Indictment. — It is necessary to allege that the escape or attempted escape occurred when defendant was serving a sentence imposed upon conviction of a misdemeanor or of a felony, irrespective of whether the presently alleged escape or attempted escape was alleged to be a first or a second offense. State v. Jordan, 247 N.C. 253, 100 S.E.2d 497 (1957); State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965); State v. Stallings, 267 N.C. 405, 148 S.E.2d 252 (1966).

An indictment charging that defendant escaped from lawful custody while serving a sentence for a felony imposed in the superior court of a named county is sufficient without naming the felony for which defendant was imprisoned, and reference in the indictment to the felony is surplusage. State v. Stallings, 267 N.C. 405, 148 S.E.2d 252 (1966).

An indictment charging that a defendant escaped while serving a sentence for a felony imposed in the superior court in a named county is sufficient without naming the felony. State v. Jackson, 14 N.C. App. 75, 187 S.E.2d 470 (1972).

A bill of indictment was insufficient to charge the felony of escape while serving a felony sentence, notwithstanding the indictment used the word "felony" to describe one of the offenses for which defendant was serving sentence when he escaped, where it also alleged that sentences for both offenses were imposed in district courts, since district courts are without jurisdiction to impose sentence in felony cases; however, the indictment was sufficient to charge misdemeanor escape. State v. Jackson, 14 N.C. App. 75, 187 S.E.2d 470 (1972).

Where defendant contended that the warrant was defective in that it did not allege: (1) the year of defendant's conviction in Craven County; (2) the length of the sentence imposed; (3) the number of defendant's commitment from Craven County; and (4) the trial docket number of the case in which the commitment was issued, it was held that such detailed information was not required to charge an offense under this section. State v. Harper, 264 N.C. 354, 141 S.E.2d 475 (1965).

A felony conviction for a second or subsequent offense is not permissible, and punishment therefor may not be imposed, unless the indictment alleges facts showing that the offense charged is a second offense. State v. Lawrence, 264 N.C. 220, 141 S.E.2d 264 (1965).

To charge a felony for a second offense of escape, it is necessary for the bill of indictment to refer to a "previous conviction of escape from the State prison system" which is one of the necessary elements under this section. A bill of indictment which fails to contain this essential element will not support a judgment imposing sentence for a second offense of escape. State v. Jackson, 14 N.C. App. 75, 187 S.E.2d 470 (1972).

The mere words "second offense" are not sufficient allegation of facts to charge the felony — time and place of conviction of the prior offense must be alleged. State v. Lawrence, 264 N.C. 220, 141 S.E.2d 264 (1965).

A bill of indictment charging that the defendant: "... (O)n the 18th day of October, 1965, with force and arms, and in the County aforesaid (Montgomery), while he ... was then and there lawfully confined in the North Carolina State prison system in the lawfully (sic) custody of the Superintendent of State Prison Unit #042, Troy, North Carolina, and while then and there serving a sentence for the crime of ... Larcency (sic) ... Escape which is a misdemeanor under the laws of the State of North Carolina, imposed at the August 4, 1965 term General County Court, and September 23, 1965 term Recorders Court, Henderson and Montgomery Counties, then and there unlawfully, willfully, and feloniously did attempt to escape and escaped from the said State Prison Unit #042 Troy, North Carolina against the form of the statute in such case made and provided, and against the peace and dignity of the State," does not properly charge a felonious escape because it nowhere refers to "previous conviction of escape from the State prison system" which is one of the elements necessary under this section. However, it will support a charge of an escape a misdemeanor. State v. Revis, 267 N.C. 255, 147 S.E.2d 892 (1966).

The words "third offense," even if included in the body of the indictment, are not sufficient to charge the offense of felonious escape, it being necessary also to allege in the indictment facts showing that at a certain time and place the defendant was convicted of the previous offense or offenses. State v. Bennett, 271 N.C. 423, 156 S.E.2d 725 (1967).

Where bill of indictment charged that defendant escaped while lawfully confined in the North Carolina State prison system in the lawful custody of the North Carolina Department of Correction, and the evidence showed he escaped while assigned by an official of the Department of Correction to work under an employee of the State Highway Commission (now Board of Transportation), the variance was not fatal. State v. Coleman, 24 N.C. App. 530, 211 S.E.2d 542 (1975).

Arrest of Judgment for Defective Indictment Does Not Bar Further Prosecution. — Arrest of judgment on the ground that the bill of indictment is fatally defective does not bar further prosecution for a violation of this section if the solicitor deems it advisable to proceed on a new bill. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

Nor Does Mistrial on Such Ground. — Where the indictment on its face negatived any possibility of a showing that at the time of the alleged escape the defendant was serving a sentence in prison, such indictment was fatally defective, the action of the court in ordering a mistrial was tantamount to quashing the bill of indictment, which the trial court had the right to do ex mero motu, and the defendant's conviction on a second bill of indictment is valid and a plea of former jeopardy is properly overruled. State v. Whitley, 264 N.C. 742, 142 S.E.2d 600 (1965).

Proof of Lawfulness of Custody and Type of Offense for Which Defendant Committed. — In order to sustain a conviction of a defendant for the offense of escape under this section, the State must prove, among other things, from the evidence and beyond a reasonable doubt that at the time of the escape the defendant was in the lawful custody of the State Department of Correction and was serving a sentence imposed upon a plea of guilty, a plea of nolo contendere, or a conviction for a felony. A properly certified copy of the commitment is competent, when introduced into evidence, to show the lawfulness of the custody and the type of offense for which he was committed. State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

Evidence Admissible to Show Defendant Was in Lawful Custody. — Certified copies of the record of the superior court showing defendant's conviction and sentence, or a commitment issued under the hand and official seal of the clerk of the superior court, are admissible for the purpose of showing that defendant was in lawful custody at the time of the alleged escape. State v. Stallings, 267 N.C. 405, 148 S.E.2d 252 (1966).

Nature of Offense for Which Defendant Committed as Question for Jury. — A defendant who has committed an escape is entitled to have his case submitted to the jury on the question of whether he was imprisoned while serving a sentence imposed for a felony or for a misdemeanor. State v. Ledford, 9 N.C. App. 245, 175 S.E.2d 605 (1970).

Prejudicial Error Not to Charge Jury That It Must Find Defendant Was Serving Sentence for Felony Conviction at Time of Escape. — Since the defendant's plea of not guilty put in issue every essential element of the crime charged, and the defendant was charged with escaping from the lawful custody of the State Department of Correction while then and there serving time for a felony, the trial judge's failure to instruct the jury that before they could convict the defendant of the felony of escape charged, they must find beyond a reasonable doubt that at the time of the escape he was serving a sentence imposed upon conviction of a felony, was prejudicial error which entitles the defendant to a new trial. State v. McCloud, 11 N.C. App. 425, 181 S.E.2d 204 (1971).

The court erred where it did not require the jury to find beyond a reasonable doubt that the defendant was serving a felony sentence in a prosecution under this section. State v. Johnson, 21 N.C. App. 85, 203 S.E.2d 424 (1974).

Evidence Required under Indictment for Fifth Offense of Escape. — Where the indictment alleges a fifth offense of escape, this creates the chore of offering competent evidence of four prior convictions for the offense of escape. Under this section the maximum punishment which can be imposed for an offense of escape is authorized for a second offense. If the indictment had charged second offense, instead of fifth, the State would have needed to prove only one of the prior convictions. State v. Chapman, 20 N.C. App. 456, 201 S.E.2d 579 (1974).

Verdict Must Show If Guilty of Offense Charged and If Convicted of Prior Violation. —The verdict must spell out (1) whether defendant is guilty of the specific violation charged and, if so, (2) whether he was convicted of a prior violation of such offense charged. State v. Lawrence, 264 N.C. 220, 141 S.E.2d 264 (1965).

Erroneous Reference to Another Section in Judgment and Commitment Order Not Prejudicial. — The fact that the judgment and commitment order in an escape prosecution erroneously referred to § 148-48 instead of this section was not prejudicial to the defendant. State v. Cobb, 9 N.C. App. 51, 175 S.E.2d 381 (1970).

Punishment Is in Accordance with Conviction of First or Second Offense. — The accused may be convicted or plead guilty to the specific violation charged — a misdemeanor — or he may be convicted or plead guilty as in the case of a second offense — a felony. Punishment is in accordance with the conviction or plea. State v. Lawrence, 264 N.C. 220, 141 S.E.2d 264 (1965).

Sentence of 12 Months Not Cruel and Unusual Punishment. — A sentence of imprisonment for 12 months for felonious escape under this section does not constitute cruel and unusual punishment, in violation of N.C. Const., Art. I, § 14 and the Eighth Amendment to the Constitution of the United States. State v. Dixon, 5 N.C. App. 514, 168 S.E.2d 418 (1969).

A sentence of one year is not excessive under this section. State v. Garris, 265 N.C. 711, 144 S.E.2d 901 (1965).

When Sentence Begins. — Prior to the 1965 amendment, it was mandatory that a sentence for escape begin at the expiration of the sentence defendant was then serving. State v. Doggett, 267 N.C. 648, 148 S.E.2d 622 (1966).

Applied in State v. Gibson, 265 N.C. 487, 144 S.E.2d 402 (1965); State v. Elliott, 269 N.C. 683, 153 S.E.2d 330 (1967); State v. Morgan, 272 N.C. 97, 157 S.E.2d 606 (1967); State v. Faison, 272 N.C. 146, 157 S.E.2d 664 (1967); State v. McCall, 273 N.C. 135, 159 S.E.2d 316 (1968); State v. Shoemaker, 273 N.C. 475, 160 S.E.2d 281 (1968); State v. Collins, 273 N.C. 479, 160 S.E.2d 291 (1968); State v. Allison, 1 N.C. App. 623, 162 S.E.2d 63 (1968); State v. Jones, 3 N.C. App. 69, 163 S.E.2d 910 (1968); State v. Ruffin, 3 N.C. App. 307, 164 S.E.2d 503 (1968); State v. Rogers, 7 N.C. App. 572, 172 S.E.2d 883 (1970); State v. Foster, 8 N.C. App. 67, 173 S.E.2d 577 (1970); State v. Ware, 10 N.C. App. 179, 177 S.E.2d 764 (1970); State v. Ford, 13 N.C. App. 34, 185 S.E.2d 328 (1971), aff'd, — N.C. —, 187 S.E.2d 741 (1973); State v. Ford, 281 N.C. 62, 187 S.E.2d 741 (1972); State v. Rufty, 16 N.C. App. 192, 191 S.E.2d 242 (1972); State v. White, 16 N.C. App. 652, 192 S.E.2d 663 (1972); State v. Edwards, 282 N.C. 578, 193 S.E.2d 736 (1973); State v. Haith, 17 N.C. App. 597, 194 S.E.2d 868 (1973); State v. Carroll, 17 N.C. App. 691, 195 S.E.2d 306 (1973); State v. Stewart, 19 N.C. App. 112, 198 S.E.2d 30 (1973); State v. Sadler, 19 N.C. App. 641, 199 S.E.2d 702 (1973); State v. Lowe, 21 N.C. App. 98, 203 S.E.2d 96 (1974); State v. Eppley, 30 N.C. App. 217, 226 S.E.2d 675 (1976).

Quoted in In re Swink, 243 N.C. 86, 89 S.E.2d 792 (1955); State v. Hunt, 265 N.C. 714, 144 S.E.2d 890 (1965).

Stated in Gainey v. Turner, 266 F. Supp. 95 (E.D.N.C. 1967); State v. Best, 292 N.C. 294, 233 S.E.2d 544 (1977).

Cited in State v. Sutton, 268 N.C. 165, 150 S.E.2d 50 (1966); State v. Alphin, 7 N.C. App. 75, 171 S.E.2d 53 (1969); State v. Jones, 9 N.C. App. 726, 177 S.E.2d 311 (1970); Jernigan v. State, 279 N.C. 556, 184 S.E.2d 259 (1971); State v. McDowell, 24 N.C. App. 590, 211 S.E.2d 475 (1975).

§ 148-46. Degree of protection against violence allowed. — (a) When any prisoner, or several combined shall offer violence to any officer, overseer, or guard, or to any fellow prisoner, or attempt to do any injury to the prison building, or to any workshop, or other equipment, or shall attempt to escape, or shall resist, or disobey any lawful command, the officer, overseer, or guard shall use any means necessary to defend himself, or to enforce the observance of discipline, or to secure the person of the offender, and to prevent an escape.

(b) A misdemeanor prisoner classified and treated as a convicted felon as the result of a consecutive felony sentence or sentences, or a convicted felon placed in the custody of the Secretary of Correction pending the outcome of an appeal, or a defendant charged with a felony or felonies and placed in the custody of the Secretary of Correction pending trial, shall be considered as a convicted felon in the custody of the Secretary of Correction against whom any means reasonably necessary, including deadly force, may be used to prevent an escape. (1933, c. 172, s. 27; 1975, c. 230.)

Editor's Note. — The 1975 amendment designated the former provisions of this section as subsection (a) and added subsection (b).

For note on use of deadly force in preventing escape of fleeing minor felon, see 34 N.C.L. Rev. 122 (1955).

§ 148-46.1. Inflicting or assisting in infliction of self injury to prisoner resulting in incapacity to perform assigned duties.—Any person serving a sentence or sentences within the State prison system who, during the term of such imprisonment, willfully and intentionally inflicts upon himself any injury resulting in a permanent or temporary incapacity to perform work or duties assigned to him by the State Department of Correction, or any prisoner who aids or abets any other prisoner in the commission of such offense, shall be guilty of a felony and upon conviction thereof shall be punished by imprisonment in the State's prison for a term not exceeding 10 years in the discretion of the court. (1959, c. 1197; 1967, c. 996, s. 13.)

Cross Reference. — As to procedure for treatment of self-inflicted injuries upon prisoners where consent is refused, see § 130-191.1.

§ 148-47. Disposition of child born of female prisoner. — Any child born of a female prisoner while she is in custody shall as soon as practicable be surrendered to the director of social services of the county wherein the child was born upon a proper order of the domestic relations court or juvenile court of said county affecting the custody of said child. When it appears to be for the best interest of the child, the court may place custody beyond the geographical bounds of Wake County: Provided, however, that all subsequent proceedings and orders affecting custody of said child shall be within the jurisdiction of the proper court of the county where the infant is residing at the time such proceeding is commenced or such order is sought: Provided, further, that nothing in this section shall affect the right of the mother to consent to the adoption of her child nor shall the right of the mother to place her child with the legal father or other suitable relative be affected by the provisions of this section. (1933, c. 172, s. 28; 1955, c. 1027; 1961, c. 186; 1969, c. 982.)

§ 148-48. Parole powers of Parole Commission unaffected. — Nothing in this Chapter shall be construed to limit or restrict the power of the Parole Commission to parole prisoners under such conditions as it may impose or prevent the reimprisonment of such prisoners upon violation of the conditions of such parole, as now provided by law. (1933, c. 172, s. 29; 1955, c. 867, s. 8; 1973, c. 1262, s. 10.)

Erroneous Reference to Statute under Which Defendant Committed. — It is not prejudicial to the defendant where, in the judgment and commitment as it appeared in the record, the statute under which the defendant was convicted was erroneously referred to as "G.S. 148.48" instead of § 148-45. State v. Cobb, 9 N.C. App. 51, 175 S.E.2d 381 (1970).

§ 148-49. Prison indebtedness not assumed by Board of Transportation. —The Board of Transportation shall not assume or pay off any part of the deficit of the State prison existing on March 22, 1933. (1933, c. 172, s. 33; 1973, c. 507, s. 5.)

ARTICLE 3A.

Facilities and Programs for Youthful Offenders.

§§ 148-49.1 to 148-49.9: Repealed by Session Laws 1977, c. 732, s. 1.

Cross Reference. — For present provisions covering the subject matter of the repealed sections, see § 148-49.10 et seq.

Editor's Note. — Session Laws 1977, c. 732, s. 6, provides: "All commitments to the Department of Correction under G.S. 148-49.3 shall be treated as commitments under G.S. 148-12(b)." Section 148-12(b) was repealed by Session Laws 1977, c. 711, s. 33.

Section 148-49.3 was also repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

ARTICLE 3B.

Facilities and Programs for Youthful Offenders.

§ 148-49.10. Purposes of Article. — The purposes of this Article are to improve the chances of correction, rehabilitation and successful return to the community of youthful offenders sentenced to imprisonment by preventing, as far as practicable, their association during their terms of imprisonment with older and more experienced criminals, and by closer coordination of the activities of sentencing, training in custody, parole, and final discharge. It is the intent of this Article to provide the courts with an additional sentencing possibility to be used in the court's discretion for correctional punishment and treatment in cases, where in the opinion of the court, a youthful offender requires a period of imprisonment, but no longer than necessary for the Parole Commission to determine that the offender is suitable for a return to freedom and is ready for a period of supervised freedom as a step toward unconditional discharge and restoration of the rights of citizenship. (1949, c. 297, s. 1; 1951, c. 250; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1975, c. 720, s. 2; 1977, c. 732, s. 2.)

Cross Reference. — For provision that this Article shall control over Session Laws 1977, c. 871, in event of conflict, see Editor's note to §§ 14-52 and 14-87.

Editor's Note. — This Article is Article 3A of this Chapter as rewritten by Session Laws 1977, c. 732, s. 2 and recodified. Where appropriate, the historical citations to the sections in the former Article have been added to corresponding sections in the Article as rewritten and recodified.

Quoted in State v. Matre, 32 N.C. App. 309, 231 S.E.2d 688 (1977).

§ 148-49.11. Definitions. — As used in this Article, a "youthful offender" is a person under 21 years of age in the custody of the Secretary of Correction. A "committed youthful offender" is a youthful offender who shall have the benefit of early release under the provisions of G.S. 148-49.15. All rights accrued by persons prior to October 1, 1977, shall not be affected. (1949, c. 297, s. 2; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1977, c. 732, s. 2.)

§ 148-49.12. Treatment of youthful offenders. — (a) To the extent practicable in light of the needs of the youthful offenders and of the needs and resources of the prison system, the Secretary of Correction shall house youthful offenders in facilities separate from prisoners over 21 years of age. In any case where the program needs of a youthful offender or the resources of the Department of Correction prohibit such separate housing, the youthful offender may be assigned to any prison facility pursuant to G.S. 148-4 and G.S. 148-36 as the Secretary of Correction shall deem appropriate. Facilities designated for the housing of youthful offenders shall be, to the extent feasible, adapted to the needs and treatment of youthful offenders. The Secretary shall endeavor to provide personnel specially qualified by training, experience, and personality for treatment of youthful offenders.

(b) The Department of Human Resources is authorized to establish and construct on any property of the State under its supervision and control modern facilities where youthful offenders committed to the custody of the Secretary of Correction may be sent for treatment, training, or work under rules and regulations jointly adopted by the Department of Human Resources and the State Department of Correction. The plans, specifications and construction of such facilities shall meet the requirements of the Secretary of Correction. The cost of the maintenance of youthful offenders assigned to such facilities by the Secretary of Correction and employed in work for the benefit of the Department of Human Resources shall be borne by the Department of Human Resources. The youthful offenders assigned to such facilities shall be under the care and supervision of agents and employees of the Department of Correction or of agents and employees of the Department of Human Resources as may be agreed upon by the two State agencies.

(c) Youthful offenders may be required to participate in vocational, educational and correctional training and activities. Appropriate use shall be made of other methods of treatment, including medical and psychiatric. The Secretary of Correction may extend the limits of the place of confinement of a youthful offender when there is reasonable cause to believe that he will honor his trust, by authorizing him, under prescribed conditions, to leave the confines of that place unaccompanied by a custodial agent for a prescribed period of time for any purpose consistent with the public interest. Willful failure to remain within the extended limits of his confinement, or to return within the time prescribed to the place of confinement designated by the Secretary of Correction, shall be deemed an escape from the custody of the Secretary as provided in G.S. 148-45.

(d) The Secretary of Correction may contract with any appropriate public or private agency not under his control for treatment and training services to youthful offenders when this is the most economical or effective way to provide needed services. (1967, c. 996, s. 10; 1973, c. 476, s. 133; c. 1262, s. 10; 1977, c. 732, s. 2.)

§ 148-49.13. Classification studies. — Every youthful offender shall first be sent to a diagnostic and classification center for a complete study, including a mental and physical examination, to ascertain his personal traits, his capabilities, pertinent circumstances of his school and family life, any previous delinquency or criminal experience, and any mental or physical defect or other factor contributing to his delinquency and criminal activities. All agencies of State and local government in North Carolina shall cooperate with the State Department of Correction in supplying or verifying information helpful for diagnosis, classification, and program planning for youthful offenders. A report of the findings and recommendations of the diagnostic and classification center shall be sent to the Secretary of Correction and shall be made available to the Parole Commission, and to the Department of Human Resources if needed. (1949, c. 297, s. 5; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1977, c. 732, s. 2.)

§ 148-49.14. Sentencing committed youthful offenders. — As an alternative to a sentence of imprisonment as is otherwise provided by law, when a person under 21 years of age is convicted of an offense punishable by imprisonment and the court does not suspend the imposition or execution of sentence and place him on probation, the court may sentence such person to the custody of the Secretary of Correction for treatment and supervision as a committed youthful offender. At the time of commitment the court shall fix a maximum term not to exceed the limit otherwise prescribed by law for the offense of which the person is convicted or 20 years, whichever is less. When the maximum permitted penalty for the offense is imprisonment for one year or longer, the maximum term imposed shall not be for less than one year. If the court shall find that a person under 21 years of age should not obtain the benefit of release under G.S. 148-49.15, it shall make such "no benefit" finding on the record. Whenever the court shall suspend the imposition or execution of sentence and place a person on probation, the court shall not order commitment as a committed youthful offender; however, if probation be subsequently revoked and the active sentence of imprisonment executed, the court may at that time commit the person, if he is still under 21 years of age, to the custody of the Secretary of Correction as a committed youthful offender. (1949, c. 297, s. 4; 1955, c. 238, s. 9; 1963, c. 1166, s. 10; 1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1977, c. 732, s. 2.)

§ 148-49.15. Parole of committed youthful offenders. — (a) The Parole Commission may at any time after reasonable notice to the Secretary of Correction parole under supervision a committed youthful offender pursuant to the provisions of Article 4 of this Chapter. When, in the judgment of the Secretary of Correction, a committed youthful offender is ready for parole under supervision, the Secretary may also recommend such action to the Parole Commission. It shall not be necessary for a committed youthful offender to have served one quarter of his sentence before becoming eligible for parole.

(b) When the Parole Commission paroles any committed youthful offender, the time that the committed youthful offender spends at liberty on parole shall be limited and shall be credited toward his active sentence in the same manner as would have occurred had such person been paroled pursuant to Article 4 of this Chapter.

(c) The Parole Commission, after notice to the Secretary of Correction, may release a committed youthful offender on parole within the last 90 days of his maximum term of commitment.

(d) The Parole Commission may revoke or modify any of its orders respecting a committed youthful offender except an order of unconditional discharge. Upon the unconditional discharge by the Parole Commission of a committed youthful offender before the expiration of the maximum sentence imposed upon him, all rights of citizenship which he forfeited on conviction shall be automatically restored and the Parole Commission shall issue to the committed youthful offender a certificate to that effect. (1967, c. 996, s. 10; 1973, c. 1153; c. 1262, s. 10; 1975, c. 720, s. 2; 1977, c. 732, s. 2.)

§ 148-49.16. Supervision of paroled youthful offenders and revocation of such parole. — (a) Paroled youthful offenders shall be under the supervision of agents and employees of the Department of Correction. The Department of Correction is authorized to encourage the formation of voluntary organizations composed of members who will serve without compensation as voluntary supervisory agents and sponsors. The powers and duties of voluntary supervisory agents and sponsors shall be limited and defined by rules and regulations adopted by the Parole Commission.

(b) If at any time before unconditional discharge of a youthful offender the Parole Commission is of the opinion that for proper reason parole should be revoked, revocation shall proceed under the provisions of Article 4 of this Chapter. After revocation of parole, the Parole Commission may thereafter reinstate parole at such time as in the commission's discretion the youthful offender is ready for reinstatement. Notice to the Secretary of Correction of intent to reinstate parole shall not be required. (1967, c. 996, s. 10; 1973, c. 1262, s. 10; 1975, c. 89; c. 720, s. 2; 1977, c. 732, s. 2.)

Editor's Note. — For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

ARTICLE 4.

Paroles.

§§ 148-50, 148-51: Repealed by Session Laws 1955, c. 867, s. 13.

§ 148-51.1. "Board of Paroles" substituted for "Commissioner of Paroles" in statutes. — Whenever the words "Commissioner of Paroles" are used or appear in any statute of this State, the same shall be stricken out and the words "Board of Paroles" shall be inserted in lieu thereof. (1953, c. 17, s. 2.)

State Government Reorganization. — The Board of Paroles was transferred to the Department of Social Rehabilitation and Control by former § 143A-168, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1973, c. 1262, s. 10. The functions of the Department of Social Rehabilitation and Control have been transferred to the Department of Correction. See § 143B-262.

Predicate of Article. — Sections 148-6, 148-26 and 148-33.1, as well as provisions with reference to paroles contained in this Article, are predicated upon the idea that the ability as well as the disposition of released prisoners to engage in honest employment and become law-abiding members of society is calculated to serve the best interests of the State and of its citizens. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

Cited in Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-52: Repealed by Session Laws 1973, c. 1262, s. 10.

Cross Reference. — As to transfer of the functions of the Board of Paroles to the Department of Correction, see § 143B-262.

§ 148-52.1. Prohibited political activities of member of Parole Commission or employee of Department. — No member of the Parole Commission or employee of the Department of Correction shall be permitted to use his position to influence elections or the political action of any person, serve as a member of the campaign committee of any political party, interfere with or participate in the preparation for any election or the conduct thereof at the polling place, or be in any manner concerned in the demanding, soliciting or receiving of any assessments, subscriptions or contributions, whether voluntary or involuntary, to any political party. Any Parole Commission member or employee of the Department who shall violate any of the provisions of this section shall be subject to dismissal from office or employment. (1953, c. 17, s. 4; 1973, c. 1262, s. 10.)

§ 148-53. Investigators and investigations of cases of prisoners. — For the purpose of investigating the cases of prisoners, the Department of Correction is hereby authorized and empowered to appoint an adequate staff of competent investigators, particularly qualified for such work, with such reasonable clerical assistance as may be required, who shall, under the rules and regulations duly adopted by the Parole Commission, investigate all cases designated by it, and otherwise aid the Commission in passing upon the question of the parole of prisoners, to the end that every prisoner in the custodial care of the State may receive full, fair, and just consideration. (1935, c. 414, s. 3; 1955, c. 867, s. 2; 1973, c. 1262, s. 10; 1977, c. 704, s. 3; c. 711, s. 30.)

Editor's Note. — The first 1977 amendment substituted "under the direction of the Department of Correction, and under regulations prescribed by the Department of Correction after consultation with the Commission" for "under the rules and regulations duly adopted by the Parole Commission" near the middle of the section and substituted "the Commission" for "it" following "all cases designated by" near the middle of the section.

The second 1977 amendment deleted "serving both determinate and indeterminate sentences in the State prison, in prison camps, and on prison farms" following "cases of prisoners" near the beginning of the section.

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-54. Parole supervisors provided for; duties. — The Department of Correction is hereby authorized to appoint a sufficient number of competent parole supervisors, who shall be particularly qualified for and adapted for the work required of them, and who shall under the direction of the Department of Correction, and under regulations prescribed by the Department of Correction after consultation with the Commission, exercise supervision and authority over paroled prisoners, assist paroled prisoners, and those who are to be paroled in finding and retaining self-supporting employment, and to promote rehabilitation work with paroled prisoners, to the end that they may become law-abiding citizens. The supervisors shall also, under the direction of the Department of Correction, maintain frequent contact with paroled prisoners and find out whether or not they are observing the conditions of their paroles, and assist them in every possible way toward compliance with the conditions, and they shall perform such other duties in connection with paroled prisoners as the Department of Correction may require. The number of supervisors may be increased by the Department of Correction as and when the number of paroled prisoners to be supervised requires or justifies such increase. (1935, c. 414, s. 4; 1955, c. 867, s. 11; 1973, c. 1262, s. 10; 1977, c. 704, s. 4.)

Editor's Note. — The 1977 amendment inserted "the Department of Correction after consultation with" near the middle of the first sentence and substituted "Department of Correction" for "Parole Commission" near the end of the second sentence.

§ 148-54.1: Repealed by Session Laws 1955, c. 867, s. 13.

§ 148-55: Repealed by Session Laws 1973, c. 1262, s. 10.

§ 148-56. Assistance in supervision of parolees and preparation of case histories. — Upon request by the Parole Commission, the county directors of social services shall assist in the supervision of parolees and shall prepare and submit to the Parole Commission case histories or other information in connection with any case under consideration for parole or some form of executive clemency. (1935, c. 414, s. 6; 1955, c. 867, s. 9; 1961, c. 186; 1969, c. 982; 1973, c. 1262, s. 10.)

§ 148-57. Rules and regulations for parole consideration. — The Parole Commission is hereby authorized and empowered to set up and establish rules and regulations in accordance with which prisoners eligible for parole consideration may have their cases reviewed and by which such proceedings may be initiated and considered. That the rules and regulations shall include but not be limited to, a plan whereby the Parole Commission may determine parole eligibility, and, when eligibility is so approved, provide for parole of a prisoner to a plan approved by the Secretary of the Department of Correction. (1935, c. 414, s. 7; 1955, c. 867, s. 4; 1973, c. 1262, s. 10; 1977, c. 704, s. 2.)

Editor's Note. — The 1977 amendment deleted "and investigated" following "reviewed" near the end of the first sentence and added the second sentence.

Nature of Honor-Grade Status, Work-Release Privilege and Parole. — Honor-grade status, work-release privilege, and parole are discretionary acts of grace or clemency extended by the State as a reward for good behavior, conferring no vested rights upon the convicted person. An accused person must be given full constitutional protection before and during his trial, but procedures of constitutional dimension are not appropriate in subsequent determinations of rewards for good behavior while serving a validly imposed sentence of confinement. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Cited in Bradford v. Weinstein, 519 F.2d 728 (4th Cir. 1974).

§ 148-57.1. Restitution as a condition of parole. — (a) As a rehabilitative measure, the Parole Commission is authorized and empowered to impose as a condition of attaining parole that the prisoner make restitution or reparation to an aggrieved party or parties for the damage or loss caused by the offense or offenses committed by the prisoner when such restitution or reparation is ordered as a condition of parole pursuant to a plea arrangement made under the provisions of G.S. 15A-1021. The Parole Commission shall implement the order of the sentencing court, but, if due to the disability of the prisoner, or for other causes, such order cannot reasonably be implemented, the Parole Commission shall state in writing why it cannot reasonably implement the order, and forward the written statement to the sentencing court. The sentencing court shall consider the written statement, and shall issue such further orders as it may deem necessary.

(b) As a rehabilitative measure, the Parole Commission is further authorized and empowered to impose as a condition of attaining parole that the prisoner make restitution or reparation to an aggrieved party when such restitution or reparation is recommended by the sentencing court as a condition of attaining parole. The Parole Commission shall not be bound by such recommendation, but if it elects not to implement the recommendation, it shall state in writing the reasons therefor, and shall forward the same to the sentencing court.

(c) When an active sentence is imposed, the court shall consider whether, as a rehabilitative measure, restitution or reparation should be ordered or recommended to the Parole Commission to be imposed as a condition of parole. If the court determines that restitution or reparation should not be ordered or recommended as a condition of parole, it shall so indicate on the commitment. If, however, the court determines that restitution or reparation should be ordered or recommended as a condition of parole, it shall make its order or recommendation a part of the order committing the defendant to custody. The order or recommendation shall be in accordance with the applicable provisions of G.S. 15-199(10). The Administrative Office of the Courts shall prepare and distribute forms which provide ample space to make restitution or reparation orders or recommendations incident to commitments, which forms shall be conveniently structured to enable the sentencing court to make its order or recommendation.

(d) The Parole Commission shall establish rules and regulations to implement this section, which shall include adequate notice to the prisoner that restitution or reparation is being considered as a condition of his parole, and opportunity for the prisoner to be heard. Such rules and regulations shall also provide additional methods whereby facts may be obtained to supplement the order or recommendation of the sentencing court. (1977, c. 614, s. 8.)

Editor's Note. — Session Laws 1977, c. 614, s. 9, contains a severability clause.

§§ 148-58, 148-58.1: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-59. Duties of clerks of superior courts as to commitments; statements filed with Department of Correction. — The several clerks of the superior courts shall attach to the commitment of each prisoner sentenced in such courts a statement furnishing such information as the Parole Commission shall by regulations prescribe, which information shall contain, among other things, the following:

(1) The court in which the prisoner was tried;
(2) The name of the prisoner and of all codefendants;
(3) The date or session when the prisoner was tried;
(4) The offense with which the prisoner was charged and the offense for which convicted;
(5) The judgment of the court and the date of the beginning of the sentence;
(6) The name and address of the presiding judge;
(7) The name and address of the prosecuting solicitor;
(8) The name and address of private prosecuting attorney, if any;
(9) The name and address of the arresting officer; and
(10) All available information of the previous criminal record of the prisoner.

The prison authorities receiving the prisoner for the beginning of the service of sentence shall detach from the commitment the statement furnishing such information and forward it to the Department of Correction, together with any additional information in the possession of such prison authorities relating to the previous criminal record of such prisoner, and the information thus furnished shall constitute the foundation and file of the prisoner's case. Forms for furnishing the information required by this section shall, upon request, be furnished to the said clerks by the State Department of Correction without charge. (1935, c. 414, s. 9; 1953, c. 17, s. 2; 1955, c. 867, s. 12; 1957, c. 349, s. 10; 1967, c. 996, s. 13; 1973, c. 108, s. 90; c. 1262, s. 10.)

File Must Contain Names and Addresses of Sworn Officials. — The file must contain the name and address of the judge, of the investigating officer, and of the State's prosecutor. These sworn officials know more of the background of the case than the record discloses. Hence, these officers may be consulted on matters in addition to that which the record discloses. Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

Applied in State v. Cooper, 275 N.C. 283, 167 S.E.2d 266 (1969).

§ 148-60: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 771, s. 36, contains a severability clause.

§ 148-60.1. Allowances for paroled prisoner. — Upon the release of any prisoner upon parole, the superintendent or warden of the institution shall provide the prisoner with suitable clothing and, if needed, an amount of money sufficient to purchase transportation to the place within the State where the prisoner is to reside. The Parole Commission may, in its discretion, provide that the prisoner shall upon his release on parole receive a sum of money not to exceed twenty-five dollars ($25.00). (1953, c. 17, s. 8; 1973, c. 1262, s. 10.)

§§ 148-60.2 to 148-62: Repealed by Session Laws 1977, c. 711, s. 33, effective July 1, 1978.

Editor's Note. — Session Laws 1977, c. 711, s. 34, provides: "All statutes which refer to sections repealed or amended by the act shall be deemed, insofar as possible, to refer to those provisions of this act which accomplish the same or an equivalent purpose."

Session Laws 1977, c. 711, s. 35, provides: "None of the provisions of this act providing for the repeal of certain sections of the General Statutes shall constitute a reenactment of the common law."

Session Laws 1977, c. 711, s. 39, provides: "This act shall become effective July 1, 1978, and applies to all matters addressed by its provisions without regard to when a defendant's guilt was established or when judgment was entered against him, except that the provisions of Article 85, 'Parole' shall not apply to persons sentenced before July 1, 1978."

Session Laws 1977, c. 711, s. 36, contains a severability clause.

§ 148-62.1. Entitlement of indigent parolee to counsel, in discretion of Board of Paroles, at revocation hearings. — Any parolee who is an indigent under the terms of G.S. 7A-450(a) may be determined entitled, in the discretion of the North Carolina Board of Paroles, to the services of counsel at State expense at a parole revocation hearing at which either:

(1) The parolee claims not to have committed the alleged violation of the parole conditions; or

(2) The parolee claims there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, even if the violation is a matter of public record or is uncontested, and that the reasons are complex or otherwise difficult to develop or present; or

(3) The parolee is incapable of speaking effectively for himself; and where the Board feels, on a case by case basis, that such appointment in accordance with either (1), (2) or (3) above is necessary for fundamental fairness. (1973, c. 1116, s. 2.)

Editor's Note. — For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

§ 148-63. Arrest powers of police officers. — Any officer who is authorized to make arrests of fugitives from justice shall have full authority and power to arrest any parolee whose parole has been revoked. (1935, c. 414, s. 13.)

§ 148-64. Cooperation of prison and parole officials and employees. — The officials and employees of the Department of Correction and the [Parole Commission] shall at all times cooperate with and furnish each other such information and assistance as will promote the purposes of this Chapter and the purposes for which these agencies were established. The Parole Commission shall have free access to all prisoners. (1935, c. 414, s. 14; 1955, c. 867, s. 7; 1967, c. 996, ss. 11, 15; 1973, c. 1262, s. 10.)

Editor's Note. — "Parole Commission" has been substituted, in brackets, for "Board of Paroles" in the first sentence, although a literal compliance with the 1973 amendatory act would have required the substitution of "Department of Correction."

Quoted in Goble v. Bounds, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-65: Repealed by Session Laws 1955, c. 867, s. 13.

ARTICLE 4A.

Out-of-State Parolee Supervision.

§ 148-65.1. Governor to execute compact; form of compact. — The Governor of this State is hereby authorized and directed to execute a compact on behalf of the State of North Carolina with any of the United States legally joining therein in the form substantially as follows:

A compact entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An Act granting the consent of Congress to any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes."

The contracting states solemnly agree:

(1) That it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state"), to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state"), while on probation or parole, if

a. Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

b. Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

(3) That duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formalities will be required

other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto, as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) That the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact, without interference.

(5) That the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact.

(6) That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

(7) That this compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other state party hereto. (1951, c. 1137, s. 1.)

Editor's Note. — For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

State Government Reorganization. — The administration of parolee supervision compacts was transferred to the Department of Social Rehabilitation and Control by former § 143A-170, enacted by Session Laws 1971, c. 864, and repealed by Session Laws 1973, c. 1262, s. 10. The functions of the Department of Social Rehabilitation and Control have been transferred to the Department of Correction. See § 143B-262.

§ 148-65.1A. Interstate parole and probation hearing procedures. — (a) Where supervision of a parolee or probationer is being administered pursuant to the Interstate Compact for the Supervision of Parolees and Probationers, the appropriate judicial or administrative authorities in this State shall notify the Compact Administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this section within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this State shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this State may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

(b) Any hearing pursuant to this section may be before the Administrator of the Interstate Compact for the Supervision of Parolees and Probationers, a deputy of such Administrator, or any other person appointed by the Administrator, or any person authorized pursuant to the laws of this State to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

(c) With respect to any hearing pursuant to this section, the parolee or probationer:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.

(2) Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

(d) In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Interstate Compact for the Supervision of Parolees and Probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this section, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter. (1973, c. 1352.)

Editor's Note. — For article on probation and parole revocation procedures and related issues, see 13 Wake Forest L. Rev. 5 (1977).

§ 148-65.2. Title of Article. — This Article may be cited as the "Uniform Act for Out-of-State Parolee Supervision." (1951, c. 1137, s. 2.)

§ 148-65.3. North Carolina sentence to be served in another jurisdiction. — The Parole Commission, with the concurrence of the Secretary of Correction, may direct that the balance of any sentence imposed by the courts of this State shall be served concurrently with a sentence or sentences in another state or federal institution, and may effect a transfer of custody of such individual to the other jurisdiction for such purpose. In the event the individual's sentence liability in the other jurisdiction terminates prior to the expiration of his North Carolina sentence, the individual shall be either paroled (if eligible) or returned to the prison department of this State, in the discretion of the Parole Commission. (1975, c. 450, s. 2.)

ARTICLE 5.

Farming Out Convicts.

§ 148-66. Cities and towns and Board of Agriculture may contract for prison labor. — The corporate authorities of any city or town may contract in writing with the State Department of Correction for the employment of convicts upon the highways or streets of such city or town, and such contracts when so exercised shall be valid and enforceable against such city or town, and the Attorney General may prosecute an action in the Superior Court of Wake County in the name of the State for their enforcement.

The Board of Agriculture of the State of North Carolina is hereby authorized and empowered to contract, in writing, with the State Department of Correction for the employment and use of convicts under its supervision to be worked on the State test farms and/or State experimental stations. (1881, c. 127, s. 1; Code, s. 3449; Rev., s. 5410; C. S., s. 7758; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 1; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

Editor's Note. — For comment on the 1943 amendment, see 21 N.C.L. Rev. 333.

Cited in Watson v. City of Durham, 207 N.C. 624, 178 S.E. 218 (1935).

§ 148-67. Hiring to cities and towns and State Board of Agriculture. — The State Department of Correction shall in their discretion, upon application to them, hire to the corporate authorities of any city or town for the purposes specified in G.S. 148-66, such convicts as are mentally and physically capable of performing the work or labor contemplated and are not at the time of such application hired or otherwise engaged in labor under the direction of the Department; but the convicts so hired for services shall be fed, clothed and quartered while so employed by the Department.

Upon application to it, it shall be the duty of the State Department of Correction, in its discretion, to hire to the Board of Agriculture of the State of North Carolina for the purposes of working on the State test farms and/or State experimental stations, such convicts as may be mentally and physically capable of performing the work or labor contemplated; but the convicts so hired for services under this paragraph shall be fed, clothed and quartered while so employed by the State Department of Correction. (1881, c. 127, s. 2; Code, s. 3450; Rev., s. 5411; C. S., s. 7759; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1943, c. 605, s. 2; 1957, c. 349, s. 10; 1967, c. 996, s. 13.)

§ 148-68. Payment of contract price; interest; enforcement of contracts. — The corporate authorities of any city or town so hiring convicts shall pay into the treasury of the State for the labor of any convict so hired such sum or sums of money at such time or times as may be agreed upon in the contract of hire; and if any such city or town fails to pay the State money due for such hiring, the same shall bear interest from the time it is due until paid at the rate of six percent (6%) per annum; and an action to recover the same may be instituted by the Attorney General in the name of the State in the courts of Wake County. (1881, c. 127, s. 3; Code, s. 3451; Rev., s. 5412; C. S., s. 7760; 1925, c. 163; 1931, c. 145, s. 35.)

§ 148-69. Agents; levy of taxes; payment of costs and expenses. — The corporate authorities of any city or town so hiring convicts may appoint and remove at will all such necessary agents to superintend the construction or improvement of such highways and streets as they may deem proper, or to pay the costs and expenses incident to such hiring may levy taxes and raise money as in other respects. (1881, c. 127, s. 4; Code, s. 3452; Rev., s. 5413; C. S., s. 7761; 1925, c. 163; 1931, c. 145, s. 35.)

§ 148-70. Management and care of inmates; prison industries; disposition of products of inmate labor. — The State Department of Correction in all contracts for labor shall provide for feeding and clothing the inmates and shall maintain, control and guard the quarters in which the inmates live during the time of the contracts; and the Department shall provide for the guarding and working of such inmates under its sole supervision and control. The Department may make such contracts for the hire of the inmates confined in the State prison as may in its discretion be proper. In accordance with the provisions of Article 11 of Chapter 66 of the General Statutes, the Department may use the labor of inmates confined in the State prison in work on farms and manufacturing, either within or without the State prison. The Department may dispose of the products of the labor of the inmates, either in farming or in manufacturing or in other industry at the State prison system, to or for any public institution owned, managed, or controlled by the State, or to or for any county, city or town in the State. Provided however, no manufacturing or other industry shall be established, supervised or controlled by the Department unless specifically approved by the Advisory Budget Commission pursuant to G.S. 66-58(f).

All departments, institutions and agencies of this State which are supported in whole or in part by the State shall give preference to Department of Correction products in purchasing articles and commodities which these departments, institutions, and agencies require and which are manufactured or produced within the State prison system and offered for sale to them by the Department of Correction, and no article or commodity available from the Department of Correction shall be purchased by any such State department, institution, or agency from any other source without permission of the board of award provided for in G.S. 143-52, unless the prison product does not meet the standard specifications and the reasonable requirements of the department, institution, or agency as determined by the board of award, or the requisition cannot be complied with because of an insufficient supply of the articles or commodities required. The provisions of Article 3 of Chapter 143 of the General Statutes respecting contracting for the purchase of all supplies, materials and equipment required by the State government or any of its departments, institutions or agencies under competitive bidding shall not apply to articles or commodities available from the Department of Correction, but the Department of Correction shall be required to keep the price of such articles or commodities substantially in accord with that paid by governmental agencies for similar articles and commodities of equivalent quality as determined by the board of award or with competitive bids which the board of award may in its discretion require, taking into consideration the best interest of the State as a whole. (1917, c. 286, s. 2; 1919, c. 80, s. 1; C. S., s. 7762; 1925, c. 163; 1931, c. 145, s. 35; 1933, c. 172, s. 18; 1957, c. 349, s. 10; 1959, c. 170, s. 2; 1967, c. 996, s. 13; 1975, c. 730, s. 1.)

Editor's Note. — The 1975 amendment rewrote the first paragraph.

Section 143-52 as rewritten by Session Laws 1971, c. 587, s. 1, no longer provides for a board of award.

ARTICLE 5A.

Prison Labor for Farm Work.

§§ 148-70.1 to 148-70.7: Repealed by Session Laws 1957, c. 349, s. 11.

Editor's Note. — For comment on the repealed sections, see 21 N.C.L. Rev. 333.

ARTICLE 6.

Reformatory.

§§ 148-71 to 148-73: Repealed by Session Laws 1947, c. 262, s. 3.

ARTICLE 7.

Records, Statistics, Research and Planning.

§ 148-74. Records Section. — Case records and related materials compiled for the use of the Secretary of Correction and the Parole Commission shall be maintained in a single central file system designed to minimize duplication and maximize effective use of such records and materials. When an individual is committed to the State prison system after a period on probation, the probation files on that individual shall be made a part of the combined files used by the Department of Correction and the Parole Commission. The Secretary of Correction shall cooperate with the Secretary of Correction and the Secretary of Correction in joint efforts aimed at developing accurate and comprehensive case records on individual offenders. The administration of the Records Section shall be under the control and direction of the Secretary of Correction. (1925, c. 228, s. 1; 1953, c. 55, ss. 2, 4; 1967, c. 996, s. 12; 1973, c. 1262, s. 10.)

Cross Reference. — For statute affecting this Article, as previously written, see § 114-18.

Access to Prison Records. — Prison records are confidential and only named parties have access to them. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Does Not Include Inspection by Public or Inmate Involved. — Prison records are confidential and are not subject to inspection by the public or by the inmate involved. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Cited in Chapman v. State, 4 N.C. App. 438, 166 S.E.2d 873 (1969).

§ 148-75: Repealed by Session Laws 1963, c. 1174, s. 5.

§ 148-76. Duties of Records Section. — The Records Section shall maintain the combined case records and receive and collect fingerprints, photographs, and other information to assist in locating, identifying, and keeping records of criminals. The information collected shall be classified, compared, and made available to law-enforcement agencies, courts, correctional agencies, or other officials requiring criminal identification, crime statistics, and other information respecting crimes and criminals. (1925, c. 228, s. 3; 1953, c. 55, s. 4; 1967, c. 996, s. 12.)

Access to Prison Records. — Prison records are confidential and only named parties have access to them. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

Does Not Include Inspection by Public or Inmate Involved. — Prison records are confidential and are not subject to inspection by the public or by the inmate involved. Goble v. Bounds, 13 N.C. App. 579, 186 S.E.2d 638, aff'd, 281 N.C. 307, 188 S.E.2d 347 (1972).

§ 148-77. Statistics, research, and planning. — In order to facilitate regular improvement in the structure, administration, and programs of the Department of Correction, there shall be established within the Department organizational units responsible for statistics, research, and planning. The Department of Correction may cooperate with and seek the cooperation of public and private agencies, institutions, officials, and individuals in the development and conduct of programs to compile and analyze statistics and to conduct research in criminology and correction. (1925, c. 228, s. 4; 1967, c. 996, s. 12.)

§ 148-78. Reports. — The Secretary of Correction may prepare and release reports on the work of the Department of Correction, including statistics and other data, accounts of research, and recommendations for legislation. (1925, c. 228, s. 5; 1953, c. 55, s. 4; 1967, c. 996, s. 12; 1973, c. 1262, s. 10.)

§ 148-79: Repealed by Session Laws 1965, c. 1049, s. 2.

Cross Reference. — For present provisions authorizing chiefs of police and sheriffs to take fingerprints and photographs of suspects and convicts, see § 114-19.

§ 148-80. Seal of Records Section; certification of records. — A seal shall be provided to be affixed to any paper, record, copy or form or true copy of any of the same in the files or records of the Records Section, and when so certified under seal by the duly appointed custodian, such record or copy shall be admitted as evidence in any court of the State. (1925, c. 228, s. 7; 1953, c. 55, s. 4; 1967, c. 996, s. 12.)

§ 148-81: Repealed by Session Laws 1965, c. 1049, s. 2.

ARTICLE 8.

Compensation to Persons Erroneously Convicted of Felonies.

§ 148-82. Provision for compensation. — Any person who, having been convicted of felony and having been imprisoned therefor in a State prison of this State, and who was thereafter or who shall hereafter be pardoned by the Governor upon the grounds that the crime with which he was charged either was not committed at all or was not committed by him, may as hereinafter provided present by petition a claim against the State for the pecuniary loss sustained by him through his erroneous conviction and imprisonment. (1947, c. 465, s. 1.)

Editor's Note. — For a brief comment on this article, see 25 N.C.L. Rev. 403.

§ 148-83. Form, requisites and contents of petition; nature of hearing. — Such petition shall be addressed to the Department of Correction, and must include a full statement of the facts upon which the claim is based, verified in the manner provided for verifying complaints in civil actions, and it may be supported by affidavits substantiating such claim. Upon its presentation the Department of Correction shall fix a time and a place for a hearing, and shall mail notice to the claimant, and shall notify the Attorney General, at least 15 days before the time fixed therefor. (1947, c. 465, s. 2; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10.)

§ 148-84. Evidence; action by Parole Commission; payment and amount of compensation. — At the hearing the claimant may introduce evidence in the form of affidavits to support the claim, and the Attorney General may introduce counter affidavits in refutation. If the Parole Commission finds from the evidence that the claimant was pardoned for the reason that the crime was not committed at all, or was not committed by the claimant, and that the claimant has been vindicated in connection with the alleged offense for which he was imprisoned; and that he has sustained pecuniary loss through such erroneous conviction and imprisonment, the Parole Commission shall report the facts, together with his [its] conclusions and recommendations to the Governor, and the Governor, with the approval of the Council of State, may pay to the claimant out of the Contingency and Emergency Fund, or out of any other available State fund, such amounts as may partially compensate the claimant for such pecuniary loss as he may be found to have suffered by reason of his erroneous conviction and imprisonment, such compensation not to be in excess of five hundred dollars ($500.00) for each year of such imprisonment actually served; and in no event shall such compensation exceed a total amount of five thousand dollars ($5,000). (1947, c. 465, s. 3; 1963, c. 1174, s. 4; 1973, c. 1262, s. 10.)

ARTICLE 9.

Prison Advisory Council.

§§ 148-85 to 148-88: Repealed by Session Laws 1957, c. 349, s. 11.

ARTICLE 10.

Interstate Agreement on Detainers.

§§ 148-89 to 148-95: Transferred to §§ 15A-761 to 15A-767 by Session Laws 1973, c. 1286, s. 22, as amended by Session Laws 1975, c. 573.

§§ 148-96 to 148-100: Reserved for future codification purposes.

ARTICLE 11.

Inmate Grievance Commission.

§ 148-101. Commission established; appointment and terms of members; chairman; vacancies; compensation. — The Inmate Grievance Commission is established as a separate agency within the Department of Correction. It shall consist of five members appointed by the Governor from a list of 10 persons recommended by the Council of the North Carolina State Bar. Of the five members so appointed, not less than two shall be attorneys admitted to practice law in the State of North Carolina and not less than two of the remaining three members shall be persons of knowledge and experience in one or more of the fields under the jurisdiction of the Secretary of Correction. Of the members initially appointed, two shall be for a term of four years, one shall be for a term of three years, and one shall be for a term of two years and one shall be for a term of one year. Thereafter, all appointments shall be for a term of four years. The Governor shall designate the chairman from time to time. The Governor, with the advice of the Council of the North Carolina State Bar, shall fill any vacancy which occurs before the expiration of a term for the balance of the term so remaining. Each member of the Commission shall receive per diem and travel expenses as authorized for members of State commissions under G.S. 138-5. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10 "Department of Correction" has been substituted for "Department of Social Rehabilitation and Control" and "Secretary of Correction" has been substituted for "Secretary of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Department or Secretary of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and reorganized the Department of Correction.

§ 148-102. Appointment and salary of Executive Director, hearing examiners and other personnel. — (a) The Commission, with the approval of the Governor, shall appoint an Executive Director of the Commission who shall serve at the pleasure of the Commission, and who shall be subject to the State Personnel Act.

(b) Upon the request of the Executive Director with the approval of the Commission, the Secretary of Correction shall authorize the appointment by the Executive Director of hearing examiners in such numbers as may be necessary for the efficient administration of the powers and duties of the Commission. Hearing examiners shall serve at the pleasure of the Commission and shall be subject to the State Personnel Act.

(c) The Secretary of Correction shall provide the Commission and hearing examiners with such investigative, secretarial and clerical employees as may be necessary for the efficient administration of the powers and duties of the Commission. Said employees shall be subject to the State Personnel Act. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10 "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Secretary or the Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, which set up the Department, and enacted Article 6 of Chapter 143B reorganizing the Department of Correction.

§ 148-103. Removal of members. — The Governor may remove any member of the Commission for one or more of the following reasons:

(1) Conviction of a crime involving moral turpitude or of any criminal offense the effect of which is to prevent or interfere with the performance of Commission duties.
(2) Failure to regularly attend meetings of the Commission.
(3) Failure to carry out duties assigned by the Commission or its chairman.
(4) Acceptance of another office or the conduct of other business conflicting with or tending to conflict with the performance of Commission duties.
(5) Any other ground which, under law, necessitates or justifies the removal of a State employee. (1973, c. 1307, s. 1.)

§ 148-104. Submission of grievance or complaint. — Any person confined to a facility within the department of the Secretary of Correction, or otherwise in the custody of the Secretary of Correction, who has any grievance or complaint against any officials or employees of the Department of Correction, may submit such grievance or complaint to the Inmate Grievance Commission within such time and in such manner as prescribed by regulations promulgated by the Commission. If, and to the extent that, the Department of Correction has a grievance or complaint procedure applicable to an inmate's particular grievance or complaint, and if the Inmate Grievance Commission deems such procedure reasonable and fair, the Commission shall by regulations require that such procedure be exhausted prior to the submission of the grievance or complaint to the Commission. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10 "Secretary of Correction" has been substituted for "Commissioner of Correction" in this section as enacted by Session Laws 1973, c. 1307.

§ 148-105. Preliminary review. — When a grievance or complaint is submitted to the Inmate Grievance Commission, the Commission, or any member thereof or the Executive Director, if so provided by the Commission's regulations, shall preliminarily review the grievance or complaint. If upon such preliminary review the grievance or complaint is determined to be on its face wholly lacking in merit, it may be dismissed by the reviewing commissioners or commissioner or Executive Director as the case may be, without a hearing or without specific findings of fact. If, after the preliminary review, it is determined that the nature of the grievance or complaint is outside the scope of authority of the Commission, the complaint shall be dismissed with recommendation as to how the inmate should proceed. Such order of dismissal shall be promptly forwarded to the complainant and shall constitute the final decision of the Secretary of Correction for purposes of any judicial review. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10 "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

§ 148-106. Hearing and disposition by Commission; review by Secretary of Correction. — Whenever, after the preliminary review provided for in G.S. 148-105, a grievance or complaint is found to be on its face not wholly lacking in merit, the Commission shall hold, as promptly as practicable, a hearing on the grievance or complaint. At least three members of the Commission shall sit at any hearing, and decisions shall be by a majority of those sitting. A record of the testimony presented at the hearing may be kept, according to the rules and regulations promulgated by the Commission. The Commission's decision shall be issued in the form of an order which shall include a statement of the findings of fact, the Commission's conclusions and its disposition of the grievance or complaint. The types of disposition shall be as follows:

(1) If after the hearing, the Commission finds in its order that the grievance or complaint is wholly lacking in merit and should be dismissed, such an order of dismissal shall be promptly forwarded to the complainant, and for the purpose of any judicial review, shall constitute the final decision of the Secretary of Correction.

(2) However, if after the hearing, the Commission in its order finds that the inmate's grievance or complaint was in whole or in part meritorious, such order shall be promptly forwarded to the Secretary of Correction. Within 15 days of the receipt of such an order, the Secretary, by order, shall affirm the order of the Commission, or shall reverse or modify the order if he disagrees with the findings and conclusions of the Commission. The Secretary shall order that the appropriate official of the facility in question accept, in whole or in part, the recommendation of the Commission or the Secretary may take whatever action he deems appropriate in light of the Commission's findings. The order of the Secretary shall be promptly forwarded to the complainant, and for the purpose of judicial review, the Secretary's order shall be final. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10 "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

§ 148-107. Hearing by examiner; review; disposition. — Whenever, after the preliminary review provided for in G.S. 148-105, a grievance or complaint is found to be on its face not wholly lacking in merit, and if hearing examiners are utilized, the Executive Director may designate an examiner to conduct a hearing as promptly as practicable. The examiner shall record the testimony presented at the hearing in accordance with the rules and regulations of the Commission. After the hearing, the examiner shall set forth, in the form of a recommendation, his findings of facts and conclusions. The examiner's recommendation shall be forwarded to the Commission. At least three members of the Commission shall review the record accumulated and assembled by the examiner and shall, within 30 days after the receipt of the recommendation, by majority vote, adopt, modify or reject it. The reviewing commissioners may also remand the grievance or complaint to the hearing examiner, or another examiner, for further proceedings. Disposition thereafter shall be in accordance with the types of disposition set forth in G.S. 148-106. (1973, c. 1307, s. 1.)

Cited in Bounds v. Smith, 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977).

§ 148-108. Access to documentary evidence; subpoenas; oaths and affirmations. — The Commission, Executive Director, commissioner or examiner, with the approval of the Secretary of Correction, shall at all reasonable times have access to, for the purposes of examination, and the right to copy, any documentary evidence of any person or institution being investigated or proceeded against, and may require by subpoena the attendance and testimony of witnesses and the production of all documentary evidence of any person relating to any matter under investigation. The presiding commissioner or examiner at a hearing may administer oaths and affirmations. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10 "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

§ 148-109. Right of inmate to appear at hearing; opportunity to call witnesses; representation. — The complaining inmate shall have the right to appear at a hearing before the Commission or examiner and shall have the opportunity to call a witness, or a reasonable number of witnesses, depending upon the circumstances and the nature of the complaint, subject to the discretion of the Commission or examiner as to the relevancy of the testimony, questions and the number of witnesses sought to be called. The inmate shall have a reasonable opportunity to question any witnesses who testify at the hearing. Such rights of the inmate shall not be unreasonably withheld or restricted by the Commission or examiner. The inmate may, if he wishes, be represented by an employee of the Department of Correction. The rules of evidence as applied in the superior and district court divisions of the General Court of Justice need not be followed. (1973, c. 1307, s. 1.)

§ 148-110. Record of complaints. — A record shall be kept of all complaints and the dispositions thereof. (1973, c. 1307, s. 1.)

§ 148-111. Conduct of hearing at institutions. — For the performance of its duties, the Commission or examiner shall conduct hearings at the facilities under the supervision and control of the Secretary of Correction. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10 "Secretary of Correction" has been substituted for "Commissioner of Correction" in this section as enacted by Session Laws 1973, c. 1307.

§ 148-112. Rules and regulations. — The Commission shall have the power to adopt rules and regulations for the conduct of its proceedings as provided for in this Article. (1973, c. 1307, s. 1.)

§ 148-113. Judicial review. — No court shall entertain an inmate's grievance or complaint within the jurisdiction of the Inmate Grievance Commission unless and until the complainant has exhausted the remedies provided in this section. Upon the final decision of the Secretary of Correction, the complainant shall be entitled to judicial review thereof. Proceedings for review shall be instituted in the General Court of Justice of Wake County, Superior Court Division. Review by the court shall be on the record of the proceedings before the Commission and the Secretary's order, if any, pursuant to such proceedings and shall be limited to a determination of whether there was a substantial basis to support the action or ruling of the Secretary and whether there was a violation of any right of the inmate protected by federal or State constitutional requirements or laws. No judicial review order or judgment provided for in this section shall have the effect of res judicata or collateral estoppel in any action brought by an inmate in a United States District Court. (1973, c. 1262, s. 10; c. 1307, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 1262, s. 10 "Secretary of Correction" has been substituted for "Secretary of the Department of Social Rehabilitation and Control" in this section as enacted by Session Laws 1973, c. 1307. Chapter 1262 did not expressly refer to the Secretary or Department of Social Rehabilitation and Control, but repealed Article 14 of Chapter 143A, setting up that Department, and enacted Article 6 of Chapter 143B, reorganizing the Department of Correction.

Chapter 149.

State Song and Toast.

Sec.
149-1. "The Old North State."
149-2. "A Toast" to North Carolina.

§ 149-1. "The Old North State". — The song known as "The Old North State," as hereinafter written, is adopted and declared to be the official song of the State of North Carolina, said song being in words as follows:

"Carolina! Carolina! Heaven's blessings attend her!
While we live we will cherish, protect and defend her;
Though the scorner may sneer at and witlings defame her,
Our hearts swell with gladness whenever we name her.
Hurrah! Hurrah! The Old North State forever!
Hurrah! Hurrah! The good Old North State!
Though she envies not others their merited glory,
Say, whose name stands the foremost in Liberty's story!
Though too true to herself e'er to crouch to oppression,
Who can yield to just rule more loyal submission?
Plain and artless her sons, but whose doors open faster
At the knock of a stranger, or the tale of disaster?
How like to the rudeness of their dear native mountains,
With rich ore in their bosoms and life in their fountains.
And her daughters, the Queen of the Forest resembling—
So graceful, so constant, yet to gentlest breath trembling;
And true lightwood at heart, let the match be applied them,
How they kindle and flame! Oh! none know but who've tried them.
Then let all who love us, love the land that we live in
(As happy a region on this side of Heaven),
(Where Plenty and Freedom, Love and Peace smile before us,
Raise aloud, raise together, the heart-thrilling chorus!"

(1927, c. 26, s. 1.)

§ 149-2. "A Toast" to North Carolina. — The song referred to as "A Toast" to North Carolina is hereby adopted and declared to be the official toast to the State of North Carolina, said toast being in words as follows:

"Here's to the land of the long leaf pine,
The summer land where the sun doth shine,
Where the weak grow strong and the strong grow great,
Here's to 'Down Home,' the Old North State!

"Here's to the land of the cotton bloom white,
Where the scuppernong perfumes the breeze at night,
Where the soft southern moss and jessamine mate,
'Neath the murmuring pines of the Old North State!

"Here's to the land where the galax grows,
Where the rhododendron's rosette glows,
Where soars Mount Mitchell's summit great,
In the 'Land of the Sky,' in the Old North State!

"Here's to the land where maidens are fair,
Where friends are true and cold hearts rare,
The near land, the dear land whatever fate,
The blest land, the best land, the Old North State!"

(1957, c. 777.)

Chapter 150.

Uniform Revocation of Licenses.

§§ 150-1 to 150-34: Repealed by Session Laws 1973, c. 1331, as amended by Session Laws 1975, c. 69, s. 4.

Cross References. — For provisions as to administrative hearings effective Feb. 1, 1976, see §§ 150A-23 through 150A-37. As to judicial review of administrative decisions, see §§ 150A-43 through 150A-52.

Chapter 150A.

Administrative Procedure Act.

Article 1.

General Provisions.

Sec.

150A-1. Scope and policy.
150A-2. Definitions.
150A-3. Special provisions on licensing.
150A-4 to 150A-8. [Reserved.]

Article 2.

Rule Making.

150A-9. Minimum procedural requirements.
150A-10. Definition.
150A-11. Special requirements.
150A-12. Procedure for adoption of rules.
150A-13. Emergency rules.
150A-14. Adoption by reference.
150A-15. Continuation of rules.
150A-16. Petition for adoption of rules.
150A-17. Declaratory rulings.
150A-18 to 150A-22. [Reserved.]

Article 3.

Administrative Hearings.

150A-23. Hearing required; notice; intervention.
150A-24. Venue of hearing.
150A-25. Conduct of hearing; answer.
150A-26. Consolidation.
150A-27. Subpoena.
150A-28. Depositions and discovery.
150A-29. Rules of evidence.
150A-30. Official notice.
150A-31. Stipulations.
150A-32. Designation of hearing officer.
150A-33. Powers of hearing officer.
150A-34. Proposal for decision.
150A-35. No ex parte communication; exceptions.
150A-36. Final agency decision.
150A-37. Official record.

Sec.

150A-38 to 150A-42. [Reserved.]

Article 4.

Judicial Review.

150A-43. Right to judicial review.
150A-44. Right to judicial intervention when agency unreasonably delays decision.
150A-45. Manner of seeking review; time for filing petition; waiver.
150A-46. Contents of petition; copies served on all parties; intervention.
150A-47. Record filed by agency with clerk of superior court; contents of record; costs.
150A-48. Stay of board order.
150A-49. Procedure for taking newly discovered evidence.
150A-50. Review by court without jury on the record.
150A-51. Scope of review; power of court in disposing of case.
150A-52. Appeal to appellate division; obtaining stay of court's decision.
150A-53 to 150A-57. [Reserved.]

Article 5.

Publication of Administrative Rules.

150A-58. Short title and definition.
150A-59. Filing of rules.
150A-60. Form of rules.
150A-61. Authority of Attorney General to revise form.
150A-62. Public inspection and notification of current and replaced rules.
150A-63. Publication of rules.
150A-64. Judicial and official notice.

Editor's Note. — Session Laws 1973, c. 1331, s. 4, makes this Chapter effective on and after July 1, 1975, and provides that it shall not affect any pending administrative hearings. Session Laws 1975, c. 69, s. 4, amends Session Laws 1973, c. 1331, s. 4, so as to change the effective date of this Chapter from July 1, 1975, to Feb. 1, 1976.

Session Laws 1973, c. 1331, s. 3, provides: "All references in the General Statutes to a section of Chapter 150 of the General Statutes not contained in this act and all references in the General Statutes to Article 18 of Chapter 143 or any of the sections contained therein (143-195 — 143-198.1) or to Article 33 of Chapter 143 or any of the sections contained therein (143-306 — 143-316) are hereby amended to read 'Chapter 150[A] of the General Statutes.' "

Many of the cases in the annotations under the various sections of this Chapter were decided under corresponding sections of repealed Article 33 of Chapter 143 and repealed Chapter 150.

ARTICLE 1.

General Provisions.

§ 150A-1. Scope and policy. — (a) This Chapter shall apply except to the extent and in the particulars that any statute makes specific provisions to the contrary. The following are specifically exempted from the provisions of this Chapter: the Employment Security Commission; the Industrial Commission; the Occupational Safety and Health Review Board; the Department of Correction; the Commission of Youth Services; and the Utilities Commission. However, Articles 2 and 3 of this Chapter shall not apply to the Department of Transportation in rule-making or administrative hearings as provided for by Chapter 20 of the North Carolina General Statutes or the Department of Revenue.

Article 4 of this Chapter, governing judicial review of final agency decisions, shall apply to the University of North Carolina and its constituent or affiliated boards, agencies, and institutions, but the University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter.

(b) The purpose and intent of this Chapter shall be to establish as nearly as possible a uniform system of administrative procedure for State agencies. (1973, c. 1331, s. 1; 1975, c. 390; c. 716, s. 5; c. 721, s. 1; c. 742, s. 4.)

Editor's Note. — The first 1975 amendment added the second paragraph of subsection (a).

The second 1975 amendment substituted "Department of Transportation in rule-making or administrative hearings as provided for by Chapter 20 of the North Carolina General Statutes" for "Department of Motor Vehicles" in the third sentence of the first paragraph of subsection (a).

The third 1975 amendment inserted "the Department of Correction" in the second sentence of the first paragraph of subsection (a).

The fourth 1975 amendment inserted "the Commission of Youth Services" in the second sentence of the first paragraph of subsection (a).

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

For note as to constitutionality of statutes licensing occupations, see 35 N.C.L. Rev. 473 (1957).

For comment on former Chapter 150, see 31 N.C.L. Rev. 378 (1953).

Applicability of Chapter to State Personnel Commission. — See Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

Cited in Nantz v. Employment Security Comm'n, 290 N.C. 473, 226 S.E.2d 340 (1976).

§ 150A-2. Definitions. — As used in this Chapter,

(1) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of Council of State, or officer of the State government of the State of North Carolina but does not include those agencies in the legislative or judicial branches of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or county or city boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly.

(2) "Contested case" means any agency proceeding, by whatever name called, wherein the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for an adjudicatory hearing. Contested cases include, but are not limited to proceedings involving rate-making, price-fixing and licensing. Contested cases shall not be deemed to include rule making, declaratory rulings, or the award or denial of a scholarship or grant.

(2a) "Effective" means that a valid rule has been filed as required by this Chapter. A rule which is effective is enforceable to the extent permitted by law.

(3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in a trade, occupation, or other activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes.

(4) "Licensing" means any administrative action issuing, failing to issue, suspending or revoking a license. "Licensing" does not include controversies over whether an examination was fair or whether the applicant passed the examination.

(5) "Party" means each person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the hearing agency where appropriate; provided, this shall not be construed to permit the hearing agency or any of its officers or employees to appeal its own decision for initial judicial review.

(6) "Person aggrieved" means any person, firm, corporation, or group of persons of common interest who are directly or indirectly affected substantially in their person, property, or public office or employment by an agency decision.

(7) "Person" means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.

(8) "Residence" means domicile or principal place of business.

(9) "Valid" means that the rule has been adopted pursuant to the procedure required by law. A valid rule is unenforceable until it is made effective. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, ss. 61, 62; 1977, c. 915, s. 5.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted "means" for "is" near the beginning of the first sentence of subdivision (2), substituted "a party are required by law to be determined by an agency after an opportunity for an adjudicatory hearing" for "specific parties are to be determined" at the end of that sentence, and substituted "declaratory rulings, or the award or denial of a scholarship or grant" for "and declaratory rulings" at the end of the third sentence of subdivision (2). The amendment also added the second sentence of subdivision (4).

The 1977 amendment added subdivisions (2a) and (9). Session Laws 1977, c. 915, s. 10 provides: "This act shall become effective on October 1, 1977, and shall expire on June 30, 1979."

Session Laws 1977, c. 915, s. 9, contains a severability clause.

The Tax Review Board Is "Administrative Agency". — See In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963).

Trustees of University Held Not Agency Governed by Former Statute. — See In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

Applicability of Former Statute. — See In re Filing by N.C. Auto. Rate Administrative Office, 278 N.C. 302, 180 S.E.2d 155 (1971); Carter v. Town of Chapel Hill, 14 N.C. App. 93, 187 S.E.2d 588 (1972).

Cited in Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 150A-3. Special provisions on licensing. — (a) When a licensee makes timely and sufficient application for renewal of a license or a new license (including the payment of any required license fee) with reference to activity of a continuing nature, the existing license does not expire until a decision on the application is finally made by the agency, and if the application is denied or the terms of the new license are limited, until the last day for applying for judicial review of the agency order. This subsection does not affect agency action summarily suspending such license under subsections (b) and (c) of this section.

(b) Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation, or amendment of a license, an agency shall give notice to the licensee, pursuant to the provisions of G.S.

150A-23(c), of alleged facts or alleged conduct which warrant the intended action. The licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

Nothing in this subsection shall be construed as amending or repealing any special statutes, in effect prior to February 1, 1976, which provide for the summary suspension of a license. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§§ 150A-4 to 150A-8: Reserved for future codification purposes.

ARTICLE 2.

Rule Making.

§ 150A-9. Minimum procedural requirements. — It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules which are provided for in G.S. 150A-13, the provisions of this Article are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Article repeals or diminishes additional requirements imposed by law or any summary power granted by law to the State or any agency thereof. No rule hereafter adopted is valid unless adopted in substantial compliance with this Article. (1973, c. 1331, s. 1.)

Substantial compliance under this section, among other things, requires notice and the opportunity to be heard, as provided by § 150A-12, before the adoption of a rule. American Guar. & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

§ 150A-10. Definition. — As used in this Article, "rule" means each agency regulation, standard or statement of general applicability that implements or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include the following:

(1) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;
(2) Declaratory rulings issued pursuant to G.S. 150A-17;
(3) Intraagency memoranda, except those to agency staff which implement or prescribe law or policy;
(4) Statements of policy or interpretations that are made in the decision of a contested case;
(5) Rules concerning the use or creation of public roads or facilities which are communicated to the public by use of signs or symbols;
(6) Interpretative rules and general statements of policy of the agency. (1973, c. 1331, s. 1.)

§ 150A-11. Special requirements. — In addition to other rule-making requirements imposed by law, each agency shall:

(1) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

(2) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions.

(3) With respect to all final orders, decisions, and opinions made after February 1, 1976, make available for public inspection together with all materials that were before the deciding officers at the time the final order, decision, or opinion was made, except materials properly for good cause held confidential. (1973, c. 1331, s. 1.)

§ 150A-12. Procedure for adoption of rules. — (a) Before the adoption, amendment or repeal of a rule, an agency shall give notice of a public hearing and offer any person an opportunity to present data, views, and arguments. The notice shall be given within the time prescribed by any applicable statute, or if none then at least 10 days before the public hearing and at least 20 days before the adoption, amendment, or repeal of the rule. The notice shall include:

(1) A reference to the statutory authority under which the action is proposed.

(2) The time and place of the public hearing and a statement of the manner in which data, views, and arguments may be submitted to the agency either at the hearing or at other times by any person.

(3) A statement of the terms or substance of the proposed rule or a description of the subjects and issues involved, and the proposed effective date of the rule.

(b) The agency shall transmit copies of the notice to the Attorney General, the Director of Research of the Legislative Services Commission and all persons who have requested the agency in writing for advance notice of proposed action which may affect them. The notices shall be in writing and shall be forwarded by mail or otherwise to the last address specified by the person.

(c) The agency shall publish the notice as prescribed in any applicable statute or, if none, shall publish the notice in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the proposed rule. Methods that may be employed by the agency, depending upon the circumstances, include publication of the notice in one or more newspapers of general circulation or, when appropriate, in trade, industry, governmental or professional publications. If the persons likely to be affected by the proposed rule are unorganized or diffuse in character and location, then the agency shall publish the notice as a display advertisement in at least three newspapers of general circulation in different parts of the State.

(d) The public hearing shall comply with any applicable statute but is not subject to the provisions of this Chapter governing contested cases, unless a rule is required by law to be adopted pursuant to adjudicatory procedures.

(e) The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the consideration urged against its adoption.

(f) No rule-making hearing is required for the adoption, amendment or repeal of a rule which solely describes the organization of the agency or describes forms or instructions used by an agency. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2.)

Cross Reference. — As to review of administrative rules, see § 120-30.24 et seq.

Editor's Note. — The 1975, 2nd Sess., amendment added subsection (f).

The 1977 amendment inserted "the Director of Research of the Legislative Services Commission" in the first sentence of subsection (b). Session Laws 1977, c. 915, s. 10 provides: "This act shall become effective on October 1, 1977, and shall expire on June 30, 1979."

Session Laws 1977, c. 915, s. 9, contains a severability clause.

Substantial compliance under § 150A-9, among other things, requires notice and the opportunity to be heard, as provided by this section, before the adoption of a rule. American Guar. & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

Notice Provisions of Other Statutes Control over This Section. — See Opinion of Attorney General to Mr. Gary K. Berman, Administrative Procedures Office, Department of Human Resources, 45 N.C.A.G. 217 (1976).

§ 150A-13. Emergency rules. — If any agency finds that an imminent peril to the public health, safety, or welfare requires adoption, amendment, or repeal of a rule, without notice or upon fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. This rule may be effective for a period of not longer than 120 days but the adoption of an identical rule under G.S. 150A-12 is not precluded. (1973, c. 1331, s. 1.)

§ 150A-14. Adoption by reference. — An agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by any other agency of this State or any agency of the United States or by a generally recognized organization or association. The reference shall fully identify the adopted matter by date and otherwise. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule, it shall amend the rule or promulgate a new rule therefor. The agency shall have available copies of the adopted matter for inspection and the rules shall state where copies of the adopted matter can be obtained and any charge therefor as of the time the rule is adopted. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted "any other agency of this State or any agency of the United States" for "an agency of this State or of the United States" in the first sentence.

Cited in Coffer v. Standard Brands, Inc., 30 N.C. App. 134, 226 S.E.2d 534 (1976).

§ 150A-15. Continuation of rules. — When a law authorizing or directing an agency to promulgate rules is repealed and substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law or the function of the agency to which the rules are related is transferred to another agency, by law or executive order, the existing rules of the original agency relating thereto continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the function. When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the repeal of such law or the abolition of the agency. (1973, c. 1331, s. 1.)

Applied in State ex rel. Commissioner of Ins. v. North Carolina Fire Ins. Rating Bureau, 292 N.C. 471, 234 S.E.2d 720 (1977).

§ 150A-16. Petition for adoption of rules.—Any person may petition an agency requesting the promulgation, amendment, or repeal of a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with G.S. 150A-12 and G.S. 150A-13. Denial of the petition to initiate rule making under this section shall be considered a final agency decision for purposes of judicial review, which shall be limited to questions of abuse of discretion. (1973, c. 1331, s. 1.)

§ 150A-17. Declaratory rulings. — On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review. (1973, c. 1331, s. 1.)

§§ 150A-18 to 150A-22: Reserved for future codification purposes.

ARTICLE 3.

Administrative Hearings.

§ 150A-23. Hearing required; notice; intervention. — (a) The parties in a contested case shall be given an opportunity for a hearing without undue delay.

(b) The parties shall be given a reasonable notice of the hearing, which notice shall include:

(1) A statement of the date, hour, place, and nature of the hearing;

(2) A reference to the particular sections of the statutes and rules involved; and

(3) A short and plain statement of the factual allegations.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given as provided in G.S. 1A-1, Rule 4(j).

(d) Any person may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. In addition, any person interested in an agency proceeding may intervene and participate in that proceeding to the extent deemed appropriate by the hearing agency.

(e) All hearings under this Chapter shall be open to the public. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 65.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted "certified mail" for "registered mail" in three places in subsection (c).

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

Stated in Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 150A-24. Venue of hearing. — When a hearing on a contested case is conducted by a hearing officer or less than a majority of an agency, the hearing shall be conducted in a county in this State in which any person whose property or rights are the subject matter of the hearing maintains his residence.

If the hearing is conducted by a majority of the agency, then the hearing shall be held in the county where the agency maintains its principal office.

When a different county would promote the ends of justice or better serve the convenience of witnesses, the agency hearing the case may in its discretion designate another county. In any case, however, the person whose property or rights are involved and the agency hearing the case may agree that the hearing is to be held in some other county.

The person whose property or rights are the subject matter of the hearing shall not be deemed to have waived any objection to venue merely by proceeding in the hearing. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-25. Conduct of hearing; answer. — (a) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

(b) A party who has been served with a notice of hearing may file a written answer before the date set for hearing.

(c) The parties shall be given an opportunity to present arguments on issues of law and policy and an opportunity to present evidence on issues of fact.

(d) A party may cross-examine any witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. A party may submit rebuttal evidence. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-26. Consolidation. — When contested cases involving a common question of law or fact or multiple proceedings involving the same or related parties are pending before an agency, the agency may order a joint hearing of any or all of the matters in issue in the cases, may order all of the cases consolidated, and may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-27. Subpoena. — An agency is hereby authorized to issue subpoenas upon its own motion or upon a written request. When such written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control. On written request, the agency shall revoke a subpoena if, upon a hearing the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 66.)

Editor's Note. — The 1975, 2nd Sess., amendment added the last two sentences.

For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

One of the purposes of a subpoena duces tecum is to insure that documents are described with sufficient particularity and with such definiteness that they can be identified without prolonged or extensive search. Myers v. Holshouser, 25 N.C. App. 683, 214 S.E.2d 630, cert. denied, 287 N.C. 664, 216 S.E.2d 907 (1975).

§ 150A-28. Depositions and discovery. — (a) A deposition may be used in lieu of other evidence when taken in compliance with the Rules of Civil Procedure, G.S. 1A-1. An agency authorized to adjudicate contested cases may adopt rules providing for discovery pursuant to the provisions of the Rules of Civil Procedure, G.S. 1A-1.

(b) On a request for identifiable agency records, with respect to material facts involved in a contested case, except records related solely to the internal procedures of the agency or which are exempt from disclosure by law, an agency shall make such records promptly available to a party. (1973, c. 1331, s. 1.)

§ 150A-29. Rules of evidence. — (a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the agency in reaching its decision, or by the court on judicial review.

(b) Evidence in a contested case, including records and documents, shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under G.S. 150A-30. Documentary evidence may be received in the form of a copy or excerpt or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original if available. (1973, c. 1331, s. 1.)

Editor's Note. — For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

Admissibility of Evidence in Proceeding before Property Tax Commission. — See In re McLean Trucking Co., 281 N.C. 375, 189 S.E.2d 194 (1972), cert. denied, 409 U.S. 1099, 93 S. Ct. 909, 34 L.Ed.2d 681 (1973).

Burden of Proof. — Where a claimant for unemployment had previously quit her job to retire and is presently claiming to have reentered the labor market, the degree of proof required of the claimant is by the greater weight of the evidence. In re Thomas, 281 N.C. 598, 189 S.E.2d 245 (1972).

§ 150A-30. Official notice. — Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the agency. The noticed fact and its source shall be stated and made known to affected parties at the earliest practicable time, and any party shall on timely request be afforded an opportunity to dispute the noticed fact through submission of evidence and argument. An agency may use its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

Judicial Notice. — The State Board of Assessment (now Department of Revenue) is neither required not permitted to shut its eyes to an established fact of common knowledge. In re Valuation of Property Located at 411-417 West Fourth Street, 282 N.C. 71, 191 S.E.2d 692 (1972).

§ 150A-31. Stipulations. — (a) The parties in a contested case by a stipulation in writing filed with the agency may agree upon any fact involved in the controversy, which stipulation shall be used as evidence at the hearing and be binding on the parties thereto. Parties should agree upon facts when practicable.

(b) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default, or other method agreed upon by the parties. (1973, c. 1331, s. 1.)

§ 150A-32. Designation of hearing officer. — (a) An agency, one or more members of the agency, a person or group of persons designated by statute or one or more hearing officers designated and authorized by the agency to handle contested cases, shall be hearing officers in contested cases. Hearings shall be conducted in an impartial manner.

(b) On the filing in good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a hearing officer, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impracticable for him to continue the hearing, another hearing officer shall be assigned to continue with the case unless it is shown that substantial prejudice to any party will result therefrom, in which event a new hearing shall be held or the case dismissed without prejudice. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-33. Powers of hearing officer. — A hearing officer may:

(1) Administer oaths and affirmations;

(2) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;

(3) Provide for the taking of testimony by deposition;

(4) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties; and

(6) Apply to the General Court of Justice, Superior Court Division, during or subsequent to a hearing for an order to show cause why any person should not be held in contempt of the agency and its processes, and the Court shall have the power to impose punishment as for contempt for acts which would constitute direct or indirect contempt if the acts occurred in an action pending in superior court. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-34. Proposal for decision. — (a) When the official or a majority of the officials of the agency who are to make a final decision have not heard a contested case, the decision shall not be made until a proposal for decision is served on the parties, and an opportunity is given to each party to file exceptions and proposed findings of fact and to present oral and written arguments to the officials who are to make the decision.

(b) The proposal for decision shall contain proposed findings of fact and proposed conclusions of law. This proposal for decision shall be prepared by a person who conducted the hearing unless he becomes unavailable to the agency. If no such person is available, the findings may be prepared by one who has read the record, unless demeanor of witnesses is a factor. If demeanor is a factor, the portions of the hearing involving demeanor shall be held again, or the case shall be dismissed without prejudice.

(c) The parties, by written stipulation or at the hearing, may waive compliance with this section. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-35. No ex parte communication; exceptions. — Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party or his representative, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party representative with professional training in accounting, actuarial science, economics, financial analysis, or rate making in a contested case insofar as the case involves rate making or financial practices or conditions. (1973, c. 1331, s. 1.)

§ 150A-36. Final agency decision. — A final decision or order of an agency in a contested case shall be made, after review of the official record as defined in G.S. 150A-37(a), in writing and shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and shall be supported by substantial evidence admissible under G.S. 150A-29(a) or 150A-30 or 150A-31. A copy of the decision or order shall be served upon each party personally or by certified mail and a copy furnished to his attorney of record. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 67.)

Editor's Note. — The 1975, 2nd Sess., amendment substituted "certified mail" for "registered mail" in the last sentence.

§ 150A-37. Official record. — (a) An agency shall prepare an official record of a hearing which shall include:

(1) Notices, pleadings, motions, and intermediate rulings;
(2) Questions and offers of proof, objections, and rulings thereon;
(3) Evidence presented;
(4) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose;
(5) Proposed findings and exceptions; and
(6) Any decision, opinion, order, or report by the officer presiding at the hearing and by the agency.

(b) Proceedings at which oral evidence is presented shall be recorded, but need not be transcribed unless requested by a party. Each party shall bear the cost of the transcript or part thereof or copy of said transcript or part thereof which said party requests. (1973, c. 1331, s. 1.)

§§ 150A-38 to 150A-42: Reserved for future codification purposes.

ARTICLE 4.

Judicial Review.

§ 150A-43. Right to judicial review. — Any person who is aggrieved by a final agency decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this Article, unless adequate procedure for judicial review is provided by some other statute, in which case the review shall be under such other statute. Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article. (1973, c. 1331, s. 1.)

Editor's Note. — For comment on former Article 33 of Chapter 143, see 31 N.C.L. Rev. 378, 382 (1953).

For note on determination of validity of rules and regulations before their application in specific cases, see 36 N.C.L. Rev. 473 (1958).

For note on judicial review of student disciplinary proceedings, see 43 N.C.L. Rev. 152 (1964).

For case law survey as to judicial review of decisions of administrative agencies, see 45 N.C.L. Rev. 816 (1967).

For article on administrative evidence rules, see 49 N.C.L. Rev. 635 (1971).

For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

The primary purpose of this Article is to confer the right to judicial review. In re appeal of Harris, 273 N.C. 20, 159 S.E.2d 539 (1968).

Liberal Construction. — This Article should be liberally construed to preserve and effectuate the right to judicial review. In re appeal of Harris, 273 N.C. 20, 159 S.E.2d 539 (1968).

Article Contemplates Decision on Factual Situation. — This Article contemplates a quasi-judicial hearing in which the parties were permitted an opportunity to offer evidence and a decision rendered applicable to a specific factual situation. Housing Auth. v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

Statute Providing for Review "by Proceedings in Nature of Certiorari". — Where a statute provides for a review "by proceedings in the nature of certiorari," this is an "adequate procedure for judicial review" within the meaning of this section only if the scope of review is equal to that under this Chapter. Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963).

Section Inapplicable to Order Revoking Real Estate Broker's or Salesman's License. — Section 93A-6, regulating real estate brokers and salesmen, provides adequate procedure for judicial review of an order of the Real Estate Licensing Board revoking a license, and this section does not apply. In re Dillingham, 257 N.C. 684, 127 S.E.2d 584 (1962).

Necessity for Exhaustion of Administrative Remedies. — Only those who have exhausted their administrative remedies can seek the benefit of this section. Sinodis v. State Bd. of Alcoholic Control, 258 N.C. 282, 128 S.E.2d 587 (1962); Porter v. State Bd. of Alcoholic Control, 4 N.C. App. 284, 166 S.E.2d 695 (1969).

Meaning of "Person Aggrieved". — The expression "person aggrieved" has no technical meaning. What it means depends on the circumstances involved. It has been variously defined: "Adversely or injuriously affected; damnified, having a grievance, having suffered a loss or injury, or injured; also having cause for complaint. More specifically the word(s) may be employed meaning adversely affected in respect of legal rights, or suffering from an infringement or denial of legal rights." In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963); Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

When Appeals by Public Officials and Governmental Units Allowed. — Where statutes exist permitting appeals by persons aggrieved, appeals by public officials and governmental units are usually allowed in cases involving questions of law relating to taxation and public funds. In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963).

County as Party Aggrieved. — A county is a party aggrieved and entitled to appeal from a decision of the State Board of Assessment (now the Property Tax Commission) reducing the valuation of property appraised by the county for tax purposes. In re appeal of Harris, 273 N.C. 20, 159 S.E.2d 539 (1968).

One may be aggrieved when he is affected only in a representative capacity. In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963).

Administrative Agency as Person Aggrieved. — An administrative agency cannot be a person aggrieved by its own order, but it may be an aggrieved party to secure judicial review of a decision of an administrative reviewing agency. In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963).

Appeal by Commissioner (now Secretary) of Revenue from Decision of Tax Review Board. — The Tax Review Board is an administrative agency of the State, and the Commissioner (now Secretary) of Revenue is entitled to appeal from a decision of the Board reversing in part an assessment of taxes made by the Commissioner (now Secretary). Section 105-241.3 does not impliedly amend this section so as to preclude the right of the Commissioner (now Secretary) to appeal, but the two statutes must be construed together and effect given the provisions of both. In re Halifax Paper Co., 259 N.C. 589, 131 S.E.2d 441 (1963).

Decisions Are Reviewable under This Article If No Other Adequate Procedure Provided. — Absent adequate procedure for judicial review by some other statute, decisions of administrative agencies are subject to review in the superior court as provided in this Article. State ex rel. North Carolina Util. Comm'n v. Old Fort Finishing Plant, 264 N.C. 416, 142 S.E.2d 8 (1965).

Findings of fact and conclusions of law made by the State Board of Elections may be reviewed in an action instituted in the superior court of a county pursuant to the provisions of this section. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

But appellant is not entitled to a jury trial in such action. Ponder v. Joslin, 262 N.C. 496, 138 S.E.2d 143 (1964).

Article Does Not Authorize Review of Executive Interpretation of Statute. — This Article does not authorize the filing of a petition in the superior court seeking an advisory opinion on the correctness of an executive interpretation of a statute. Housing Auth. v. Johnson, 261 N.C. 76, 134 S.E.2d 121 (1964).

And it Will Not Support Attack on Constitutionality of Parole Board [Parole Commission] Statute. — The provisions of this Article are inappropriate to initiate an attack upon the constitutionality of a statute fixing the powers and duties of the Board of Paroles [Parole Commission]. The question of the constitutionality of a statute is not for administrative boards but for the judicial branch. Jernigan v. State, 279 N.C. 556, 184 S.E.2d 259 (1971).

Termination of Employment of Superintendent of Schools Reviewable. — The decision of the Wayne County Board of Education terminating the employment of the superintendent of schools and declaring the office vacant is subject to review under this Article. Although the section providing for the removal of school superintendents, § 115-42, contains a proviso that such "superintendent shall have the right to try his title to office in the courts of the State," the statute is silent as to the procedure and the scope of review contemplated. The procedure and scope of review shall be as provided by this Article. James v. Wayne County Bd. of Educ., 15 N.C. App. 531, 190 S.E.2d 224 (1972).

Judicial Review of Suspension of University Student Available under Article. — See In re Carter, 262 N.C. 360, 137 S.E.2d 150 (1964).

Court Review of Suspensions and Exclusions Formerly Limited. — See Givens v. Poe, 346 F. Supp. 202 (W.D.N.C. 1972).

Suspension of Retail Beer Permit. — Judicial review of an order of the State Board of Alcoholic Control suspending a retail beer permit is governed by this section. Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

Decisions of Property Tax Commission. — Any person aggrieved by a final decision of the Property Tax Commission, and who has exhausted all administrative remedies available to him, is entitled to judicial review under this section. Brock v. North Carolina Property Tax Comm'n, 290 N.C. 731, 228 S.E.2d 254 (1976).

The administrative decisions of the Property Tax Commission, whether with respect to the schedule of values or the appraisal of property, are always subject to judicial review after administrative procedures have been exhausted. Brock v. North Carolina Property Tax Comm'n, 290 N.C. 731, 228 S.E.2d 254 (1976).

Order to Forfeit Bid Bond. — Petitioners were aggrieved persons when the Secretary of Administration ordered them to forfeit their $316,600 bid bond or be subject to liability for twice that amount. In re Metric Constructors, Inc., 31 N.C. App. 88, 228 S.E.2d 533 (1976).

Upon review pursuant to this section, the "whole record" test is applicable, and the decision of the State Board of Alcoholic Control may be reversed if substantial rights of the licensee are prejudiced by administrative findings, inferences, conclusions or decisions which are not supported "by competent, material and substantial evidence in view of the entire record as submitted." Fay v. State Bd. of Alcoholic Control, 30 N.C. App. 492, 227 S.E.2d 298, cert. denied, 291 N.C. 175, 229 S.E.2d 689 (1976).

Quoted in Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 150A-44. Right to judicial intervention when agency unreasonably delays decision. — Unreasonable delay on the part of any agency in reaching a final decision shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency. (1973, c. 1331, s. 1.)

The right under this section may be asserted to prevent unreasonable delay in reaching a final agency decision. Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 150A-45. Manner of seeking review; time for filing petition; waiver. — In order to obtain judicial review of a final agency decision under this Chapter, the person seeking review must file a petition in the Superior Court of Wake County; except that where the original determination in the matter was made by a local agency or local board and appealed to the State board, the petition may be filed in the superior court of the county where the original determination was made. Such petition may be filed at any time after final decision, but must be filed not later than 30 days after a written copy of the decision is served upon the person seeking the review by personal service or by registered mail. Failure to file such petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter, except that for good cause shown, the judge of the superior court may issue an order permitting a review of the agency decision under this Chapter notwithstanding such waiver. (1973, c. 1331, s. 1.)

Strict Construction. — The provisions of this section providing for the waiver or forfeiture of the right to judicial review under certain conditions should be construed strictly; and, when so construed, the right to petition for review continues unless and until 30 days have expired from the date "a written copy" of the administrative order has been served on the party seeking review either by personal service or by registered mail, return receipt requested. In re appeal of Harris, 273 N.C. 20, 159 S.E.2d 539 (1968).

Hearing under § 20-25 Precluded. — A petitioner seeking judicial review of a decision of the North Carolina Driver License Medical Review Board must file such petition in the Superior Court of Wake County pursuant to this section and may not obtain a hearing under

§ 20-25 in the superior court of the county in which he resides. Cox v. Miller, 26 N.C. App. 749, 217 S.E.2d 198 (1975).

§ 150A-46. Contents of petition; copies served on all parties; intervention. — The petition shall explicitly state what exceptions are taken to the decision or procedure of the agency and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by personal service or by registered mail upon the agency which rendered the decision, and upon all who were parties of record to the agency proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the agency proceeding may become a party to the review proceedings by notifying the court within 10 days after receipt of the copy of the petition.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24. (1973, c. 1331, s. 1.)

Purpose of Statute Necessitates Liberal Construction. — The primary purpose of the statute is to confer the right of review, and the statute should be liberally construed to preserve and effectuate that right. James v. Wayne County Bd. of Educ., 15 N.C. App. 531, 190 S.E.2d 224 (1972).

§ 150A-47. Record filed by agency with clerk of superior court; contents of record; costs. — Within 30 days after receipt of the copy of the petition for review, or within such additional time as the court may allow, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceedings under review. With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable. (1973, c. 1331, s. 1.)

§ 150A-48. Stay of board order. — At any time before or during the review proceeding, the person aggrieved may apply to the reviewing court for an order staying the operation of the agency decision pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper and subject to the provisions of G.S. 1A-1, Rule 65. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

This section must be construed in pari materia with the rest of Article 4, Chapter 150A, entitled "Judicial Review," and particularly § 150A-43 which states that "any person who is aggrieved by a final agency decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this Article." Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

This section was meant to entitle the aggrieved person to a stay order only after the final agency decision and either before or after the initiation of judicial review. Stevenson v. North Carolina Dep't of Ins., 31 N.C. App. 299, 229 S.E.2d 209 (1976).

§ 150A-49. Procedure for taking newly discovered evidence. — At any time after petition for review has been filed, application may be made to the reviewing court for leave to present additional evidence. If the court is satisfied that the evidence is material to the issues, that it is not merely cumulative, and that it could not reasonably have been presented at the hearing before the agency, the court may remand the case to the agency where additional evidence shall be taken. The agency may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation, or any modifications, of its findings or decision. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

§ 150A-50. Review by court without jury on the record. — The review of agency decisions under this Chapter shall be conducted by the court without a jury. The court shall hear oral arguments and receive written briefs, but shall take no evidence not offered at the hearing; except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken by the court; and except that where no record was made of the administrative proceeding or the record is inadequate, the judge in his discretion may hear all or part of the matter de novo. (1973, c. 1331, s. 1.)

Review of Order of Real Estate Board. — Under § 93A-6, review of an order of the Real Estate Licensing Board suspending or revoking a license is de novo in the superior court in all cases, and this Article does not apply regardless of whether the Board has made a record of its proceedings. In re Dillingham, 257 N.C. 684, 127 S.E.2d 584 (1962).

§ 150A-51. Scope of review; power of court in disposing of case. — The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional provisions; or
(2) In excess of the statutory authority or jurisdiction of the agency; or
(3) Made upon unlawful procedure; or
(4) Affected by other error of law; or
(5) Unsupported by substantial evidence admissible under G.S. 150A-29(a) or G.S. 150A-30 in view of the entire record as submitted; or
(6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or modification. (1973, c. 1331, s. 1.)

Editor's Note. — For comment entitled, "The Problem of Procedural Delay in Contested Case Hearings . . ." under the North Carolina APA, see 7 N.C. Cent. L.J. 347 (1976).

The standard of judicial review set forth in subdivision (5) is known as the "whole record" test and must be distinguished from both de novo review and the "any competent evidence" standard of review. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977).

Application of "Whole Record" Test. — The "whole record" is applicable upon a review under this section, and the decision of the Board of Alcoholic Control may be reversed if substantial rights of the licensee are prejudiced by administrative findings, inferences, conclusions or decisions which are not supported "by competent, material, and substantial evidence in view of the entire record as submitted." Underwood v. State Bd. of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

The "whole record" test set forth in subdivision (5) does not allow the reviewing court to replace the board's judgment as between two reasonably conflicting views, even though the court could justifiably have reached a different result had the matter been before it de novo. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977).

On the other hand, the "whole record" rule set forth in subdivision (5) requires the court, in determining the substantiality of evidence supporting the board's decision, to take into account whatever in the record fairly detracts from the weight of the board's evidence. Under the whole evidence rule, the court may not consider the evidence which in and of itself justifies the board's result, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977).

No court can weigh evidence presented to the State board and substitute its evaluation of the evidence for that of the board. In re Appeal of Amp, Inc., 287 N.C. 547, 215 S.E.2d 752 (1975).

Upon a review of an order of the Property Tax Commission the superior court is without authority to make findings at variance with the findings of the board when the findings of the board are supported by competent, material and substantial evidence. In re Appeal of Amp, Inc., 287 N.C. 547, 215 S.E.2d 752 (1975).

Where the superior court at the instance of appellant found additional facts which the Tax Review Board had, although requested, refused to make, the court, in making these findings, weighed the evidence and substituted its evaluation of the evidence for that of the Board and in so doing, it exceeded its right of review. Clark Equip. Co. v. Johnson, 261 N.C. 269, 134 S.E.2d 327 (1964).

The court cannot substitute its judgment for that of the State Board of Opticians in making findings of fact. In re Berman, 245 N.C. 612, 96 S.E.2d 836 (1957).

Findings of Fact Supported by Competent Evidence Are Conclusive. — The administrative findings of fact made by the State Board of Opticians, if supported by competent, material and substantial evidence in view of the entire record, are conclusive upon a reviewing court, and not within the scope of its reviewing powers. In re Berman, 245 N.C. 612, 96 S.E.2d 836 (1957); In re Hawkins, 17 N.C. App. 378, 194 S.E.2d 540, cert. denied, 414 U.S. 1001, 94 S. Ct. 355, 38 L.Ed.2d 237 (1973).

Findings Based on Unsworn Statements. — Absent stipulations or waiver, a zoning board of adjustment may not base critical findings of fact as to the existence or nonexistence of a nonconforming use on unsworn statements. Jarrell v. Board of Adjustment, 258 N.C. 476, 128 S.E.2d 879 (1963).

Review of Order of Real Estate Board. — See note to § 150A-50.

Review of Order of Property Tax Commission. — Upon review of an order of the State Board of Assessment (now the Property Tax Commission), the superior court is without authority to make findings at variance with the findings of the Board when the findings of the Board are supported by material and substantial evidence. In re Property of Pine Raleigh Corp., 258 N.C. 398, 128 S.E.2d 855 (1963).

When a judicial review is sought in the superior court on the record made before the State Board of Assessment (now the Property Tax Commission), that court is without authority to make findings at variance with the findings of the Board which are supported by material and substantial evidence because that is the exclusive function of the State Board of Assessment. In re Appeal of Reeves Broadcasting Corp., 273 N.C. 571, 160 S.E.2d 728 (1968).

It is only when the actions of the State Board of Assessment (now the Property Tax Commission) are found to be arbitrary and capricious that courts will interfere with tax assessments because of asserted violations of the due process clause. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

Showing Necessary to Obtain Relief From Valuations of Property for Taxation. — In order to obtain relief from valuations upon their property by the State Board of Assessment (now the Property Tax Commission), appellant electric membership corporations must show that the methods used in determining true value were illegal and arbitrary, and that appellants were substantially injured by a resulting excessive valuation of their property. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

Official Acts Presumed Made in Good Faith, etc. — The members of the State Board of Assessment (now the Property Tax Commission) are public officers, and the Board's official acts are presumed to be made in good faith and in accordance with law; the burden is upon the party asserting otherwise to overcome such presumptions by competent evidence to the contrary. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

Where on appeal the only evidence offered by appellant electric membership corporations as to the value of their property was their local tax listings, these declarations alone did not have sufficient probative force to overcome the presumption of correctness and regularity accompanying the Board's actions. Albemarle Elec. Membership Corp. v. Alexander, 282 N.C. 402, 192 S.E.2d 811 (1972).

Review of Award of Industrial Commission. — In passing upon an appeal from an award of the Industrial Commission, the reviewing court is limited in its inquiry to two questions of law, namely: (1) whether or not there was any competent evidence before the Commission to support its findings of fact; and (2) whether or not the findings of fact of the Commission justify its legal conclusions and decision. Waggoner v. North Carolina Bd. of Alcoholic Control, 7 N.C. App. 692, 173 S.E.2d 548 (1970).

Review of Teacher Dismissal Proceedings. — The general guidelines for judicial review contained in subdivision (5) are modified by the evidentiary rules of teacher dismissal proceedings found in § 115-142(j)(2). Although the reviewing superior court must still look for substantial evidence in the record as a whole which is competent and material, it may not exclude testimony from its consideration merely because it would otherwise violate a rule of evidence. Thompson v. Wake County Bd. of Educ., 31 N.C. App. 401, 230 S.E.2d 164 (1976), rev'd on other grounds, 292 N.C. 406, 233 S.E.2d 538 (1977).

Under the whole record rule of subdivision (5), a trial judge reviewing a school board decision under § 115-142 must not only consider the complete testimony of all the witnesses, he must also consider the panel report of the Professional Review Committee. Under § 115-142(1)(2) the report of the panel is "deemed to be competent evidence," and when it is introduced, it becomes part of the record. Thompson v. Wake County Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977).

The superior court is without power to order the North Carolina Board of Alcoholic Control to issue a permit to petitioners, but can order the Board to exercise its discretion in accordance with law. Waggoner v. North Carolina Bd. of Alcoholic Control, 7 N.C. App. 692, 173 S.E.2d 548 (1970).

Evidence held incompetent to sustain a finding of the State Board of Alcoholic Control that a licensee sold beer to a minor or failed to give his licensed premises proper supervision. Thomas v. State Bd. of Alcoholic Control, 258 N.C. 513, 128 S.E.2d 884 (1963).

§ 150A-52. Appeal to appellate division; obtaining stay of court's decision. — Any party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the superior court under rules of procedure applicable in other civil cases. The appealing party may apply to the superior court for a stay of its final determination, or a stay of the agency decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division. (1973, c. 1331, s. 1.)

A legal proceeding must be prosecuted by a legal person, whether it be a natural person, sui juris, or a group of individuals or other entity having the capacity to sue and be sued, such as a corporation, partnership, unincorporated association, or governmental body or agency. Even a class action must be prosecuted or defended by one or more named members of the class. A legal proceeding prosecuted by an aggregation of anonymous individuals, known only to their counsel, is a phenomenon unknown to the law of this jurisdiction. In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

The rule that an appeal to the appellate division may be prosecuted only at the instance of a party or parties aggrieved by the judgment of the court or tribunal from which the appeal is taken, applies with as much force to proceedings governed by this Article as to ordinary civil cases. In re Coleman, 11 N.C. App. 124, 180 S.E.2d 439 (1971).

§§ 150A-53 to 150A-57: Reserved for future codification purposes.

ARTICLE 5.

Publication of Administrative Rules.

§ 150A-58. Short title and definition. — (a) This Article may be cited as "The Registration of State Administrative Rules Act."

(b) As used in this Article, "rule" means every rule, regulation, ordinance, standard, and amendment thereto adopted by any agency and shall include rules and regulations regarding substantive matters, standards for products, procedural rules for complying with statutory or regulatory authority or requirements and executive orders of the Governor.

"Rule" shall not include:

(1) Rules, procedures, or regulations which relate only to the internal management of any agency;

(2) Directives or advisory opinions to any specifically named person or group with no general applicability throughout the State;

(3) Dispositions of any specific issue or matter by the process of adjudication; and

(4) Orders establishing or fixing rates or tariffs.

(c) "Agency" means every agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the executive branch of State government; any provision of any other statute to the contrary notwithstanding. The provisions of this Article do not apply to agencies in the judicial branch of State government, agencies in the legislative branch of State government, counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, county or city boards of education, the University of North Carolina, other local public districts, units, or bodies of any kind, or private corporations created by act of the General Assembly. (1973, c. 1331, s. 1; 1977, c. 915, s. 7.)

Editor's Note. — The 1977 amendment added subsection (c). Session Laws 1977, c. 915, s. 10 provides: "This act shall become effective on October 1, 1977, and shall expire on June 30, 1979."

Session Laws 1977, c. 915, s. 9, contains a severability clause.

§ 150A-59. Filing of rules. — (a) Rules adopted by any agency on or after February 1, 1976, shall be filed with the Attorney General. All rules shall become effective 30 days after filing, unless the agency shall certify the existence of good cause for, and shall specify, an earlier or later effective date. The certification shall state the agency's finding and reasons. An earlier effective date shall not precede the date of filing.

(b) The acceptance for filing of a rule by the Attorney General, by his notation on the face thereof, shall constitute prima facie evidence of compliance with this Article.

(c) Rules previously in existence shall be ineffective after January 31, 1976, except that they shall immediately become effective upon filing in accordance with the provisions of this Article. (1973, c. 1331, s. 1; 1975, c. 69, ss. 1, 2, 5, 6.)

Editor's Note. — The 1975 amendment substituted "February 1, 1976" for "July 1, 1975" in the first sentence of subsection (a) and "January 31, 1976" for "June 30, 1975" in subsection (c).

Rules Effective before January 31, 1976, Are Not Enforceable until Filed. — See Opinion of Attorney General to Mr. Sam H. Long, III, Legal Counsel to the Governor, 45 N.C.A.G. 207 (1976).

Stated in American Guar. & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

§ 150A-60. Form of rules. — In order to be acceptable for filing, the rule must:

(1) Cite the statute or other authority pursuant to which the rule is adopted;
(2) Bear a certification by the agency of its adoption;
(3) Cite any prior rule or rules of the agency or its predecessor in authority which it rescinds, amends, supersedes, or supplements; and
(4) Be in the physical form specified by the Attorney General. (1973, c. 1331, s. 1.)

§ 150A-61. Authority of Attorney General to revise form. — The Attorney General shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

(1) To rearrange the order of rules, chapters, subchapters, articles, sections, paragraphs, and other divisions or subdivisions;
(2) To provide or revise titles or catchlines;
(3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;

(4) To rearrange definitions and lists; and

(5) To make other changes in arrangement or in form that in the opinion of the Attorney General do not alter the substance of the rule and that the Attorney General determines are necessary or desirable for an accurate, clear, and orderly arrangement of rules.

Revision of form by the Attorney General shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule.

The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency. (1973, c. 1331, s. 1.)

Stated in American Guar. & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

§ 150A-62. Public inspection and notification of current and replaced rules. — (a) Immediately upon notation of a filing as specified in G.S. 150A-59(b), the Attorney General shall make the rule available for public inspection during regular office hours. Superseded, amended, revised, and rescinded rules filed in accordance with the provisions of this Article shall remain available for public inspection. The current and the prior rules so filed shall be separately arranged in compliance with the provisions of G.S. 150A-61.

(b) The Attorney General shall make copies of current and prior rules, filed in accordance with the provisions of this Article, available to the public at a cost to be determined by him.

(c) Within 25 days of the acceptance by the Attorney General of a rule for filing, the agency filing the rule:

(1) Shall publish the rule as prescribed in any applicable statute; and

(2) May distribute the rule in a manner selected by the agency as best calculated to give notice to persons likely to be affected by the rule. The rule so published or distributed shall contain the legend: "The form of this rule may be revised by the Attorney General pursuant to the provisions of G.S. 150A-61."

(d) The Attorney General is authorized to prepare and distribute summaries of rules filed pursuant to this Article in a manner selected by him as best calculated to give notice to the public. (1973, c. 1331, s. 1.)

Cited in American Guar. & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

§ 150A-63. Publication of rules. — (a) The Attorney General shall compile, index, and publish all rules filed and effective pursuant to the provisions of this Article.

(b) As nearly as practicable the compilation shall, in classification, arrangement, numbering, and indexing, conform to the organization of the General Statutes.

(c) If the Attorney General determines that publication of any rule would be impracticable, he shall substitute a summary with specific reference to the official rule on file in his office.

(d) As soon as practicable after February 1, 1976, the Attorney General shall publish a compilation of all rules in force pursuant to the provisions of this Article. Cumulative supplements shall be published annually, or more frequently in the discretion of the Attorney General. Recompilations shall be made in the discretion of the Attorney General.

(e) Copies of the compilation, supplements, and recompilations shall be distributed by the Attorney General as soon after publication as practicable, without charge, to the following officials and departments, in the following quantities:

(1) One copy to each clerk of the superior court, to be maintained in the county law library in counties having a county law library, or in the clerk's office available for public inspection in counties having no county law library; one copy to each judge of the district and superior courts; one copy to the Chief Judge and each associate justice of the North Carolina Supreme Court; one copy to the Chief Judge and each associate judge of the North Carolina Court of Appeals; one copy each to the Clerk of the Supreme Court and the Clerk of the Court of Appeals; one copy to each district attorney; one copy to the United States Circuit Court of Appeals, Fourth Circuit; one copy to each Judge of Federal District Court who resides in North Carolina; one copy to the Supreme Court of the United States; and one copy to the United States Department of Justice.

(2) Fifteen copies to the officer of the Legislative Services Commission of North Carolina to be made available by him to the members of the General Assembly.

(3) As requested by each major department created by the Executive Organization Acts of 1971 and 1973, the office of the Governor, Lieutenant Governor, and the Board of Governors of the University, to a limit of 20 copies each. Distribution and maintenance shall be determined by the requesting official or department. Requests shall be limited to need determined by the Attorney General based upon information supplied to him by the requesting official or department.

(4) Four copies each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals.

(f) The Attorney General shall make available copies of the compilation, and of all supplements, to other persons at a price determined by him to cover publication and mailing costs. (1973, c. 1331, s. 1; 1975, c. 69, ss. 3, 7; c. 688, s. 1.)

Editor's Note. — The first 1975 amendment substituted "February 1, 1976" for "July 1, 1975" near the beginning of the first sentence of subsection (d).

The second 1975 amendment added subsections (e) and (f).

Cited in American Guar. & Liab. Ins. Co. v. Ingram, 32 N.C. App. 552, 233 S.E.2d 398 (1977).

§ 150A-64. Judicial and official notice. — The courts and administrative agencies shall take judicial or official notice, respectively, of any rule effective under this Article. (1973, c. 1331, s. 1.)

Chapter 151.

Constables.

§§ 151-1 to 151-8: Repealed by Session Laws 1969, c. 1190, s. 57.

Chapter 152.

Coroners.

Sec.
152-1. Election; vacancies in office; appointment by clerk in special cases.
152-2. Oaths to be taken.
152-3. Coroner's bond.
152-4. Coroners' bonds registered; certified copies evidence.
152-5. Fees of coroners.
152-6. Powers, penalties, and liabilities of special coroner.

Sec.
152-7. Duties of coroners with respect to inquests and preliminary hearings.
152-8. Acts as sheriff in certain cases; special coroner.
152-9. Compensation of jurors at inquest.
152-10. Hearing by coroner in lieu of other preliminary hearing; habeas corpus.
152-11. Service of process issued by coroner.

§ 152-1. Election; vacancies in office; appointment by clerk in special cases. — In each county a coroner shall be elected by the qualified voters thereof in the same manner and at the same time as the election of members of the General Assembly, and shall hold office for a term of four years, or until his successor is elected and qualified.

A vacancy in the office of coroner shall be filled by the county commissioners, and the person so appointed shall, upon qualification, hold office until his successor is elected and qualified.

When the coroner shall be out of the county, or shall for any reason be unable to hold the necessary inquest as provided by law, or there is a vacancy existing in the office of coroner which has not been filled by the county commissioners and it is made to appear to the clerk of the superior court by satisfactory evidence that a deceased person whose body has been found within the county probably came to his death by the criminal act or default of some person, it is the duty of the clerk to appoint some suitable person to act as coroner in such special case. (Const., art. 4, s. 24; 1903, c. 661; Rev., ss. 1047, 1049; C. S., ss. 1014, 1018; Ex. Sess. 1924, c. 65; 1935, c. 376.)

Local Modification. — Alamance (office of coroner abolished): 1975, c. 577; Anson (office of coroner abolished): 1975, c. 270; Buncombe (assistant coroner): 1963, c. 358; Burke (assistant coroner): 1963, c. 952; Catawba: 1973, c. 354 (Chapter 152 inapplicable); Cleveland: 1967, c. 431; Craven, Davidson (office of coroner abolished): 1973, c. 1049; Davie (office of coroner abolished): 1973, c. 1146; Forsyth (assistant coroner): 1955, c. 95, s. 1; Franklin (office of coroner abolished): 1975, c. 333; Gaston (assistant coroner): 1973, c. 1371; 1975, c. 201; Iredell: 1965, c. 159; Northampton, Orange, Pender and Perquimans (office of coroner abolished): 1973, c. 1146; Pitt: 1963, c. 330; Randolph: 1965, c. 754, s. 1; Stokes (office of coroner abolished): 1977, c. 348; Surry (assistant coroner): 1953, c. 291; (office of coroner): 1973, c. 37; Tyrrell (office of coroner abolished): 1975, c. 96; Wake: 1957, c. 638.

Cross Reference. — For provision that this Chapter shall not apply in certain counties, see §130-202.2.

Editor's Note. — For an article discussing the provisions of this Chapter and suggesting the abolition of the coroner system, see 26 N.C.L. Rev. 96.

§ 152-2. Oaths to be taken. — Every coroner, before entering upon the duties of his office, shall take and subscribe to the oaths prescribed for public officers, and an oath of office. (Code, s. 661; Rev., s. 1048; C. S., s. 1015; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

Cross References. — As to form of oath, see §11-11. As to oaths required of public officers, see § 11-1 et seq., N.C. Const., Art. VI, § 7. As to penalty for failure to take oath, see § 128-5. As to oath of county officers generally, see § 153A-26.

§ 152-3. Coroner's bond. — Every coroner shall execute an undertaking conditioned upon the faithful discharge of the duties of his office with good and sufficient surety in the penal sum of two thousand dollars ($2,000), payable to the State of North Carolina, and approved by the board of county commissioners. (1791, c. 342, ss. 1, 2, P. R.; 1820, c. 1047, ss. 1, 2, P. R.; R. C., c. 25, s. 2; Code, s. 661; 1899, c. 54, s. 52; Rev., s. 299; C. S., s. 1016; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1; Yancey: 1945, c. 271.

Cross Reference. — As to official bonds generally, see § 109-1 et seq.

Want of Official Bond. — Where one has been appointed coroner of a county, though it may appear he has not renewed his official bond, as required by law, yet his acts as a coroner de facto are valid, at least as regards third persons. Mabry v. Turrentine, 30 N.C. 201 (1847).

§ 152-4. Coroners' bonds registered; certified copies evidence. — All official bonds of coroners shall be duly approved, certified, registered, and filed as sheriffs' bonds are required to be; and certified copies of the same duly certified by the register of deeds, with official seal attached, shall be received and read in evidence in the like cases and in like manner as such copies of sheriffs' bonds are now allowed to be read in evidence. (1860-1, c. 18; Code, s. 662; Rev., s. 300; C. S., s. 1017; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

Cross References. — See §§ 109-3 through 109-15. See also § 128-8 et seq. and notes thereto.

§ 152-5. Fees of coroners. — Fees of coroners shall be the same as are or may be allowed sheriffs in similar cases:

For holding an inquest over a dead body, five dollars ($5.00); if necessarily engaged more than one day, for each additional day, five dollars ($5.00).

For burying a pauper over whom an inquest has been held, all necessary and actual expenses, to be approved by the board of county commissioners, and paid by the county. (Code, s. 3743; 1903, c. 781; Rev., s. 2775; C. S., s. 3905; 1967, c. 1154, s. 6.)

Local Modification. — Alamance: 1959, c. 1105, s. 2; Buncombe: 1949, c. 910; Burke: 1963, c. 952; Cabarrus: 1947, c. 410; 1953, c. 567; Caldwell: Pub. Loc. 1939, c. 191; Camden: 1947, c. 200; Cleveland: Pub. Loc. 1921, c. 75; Columbus: 1959, c. 467, s. 3; Cumberland: 1941, c. 73; 1953, c. 90; Davidson: Pub. Loc. 1923, c. 402; Forsyth: 1955, c. 95, s. 2, amended by 1959, c. 942, s. 1; Graham: 1961, c. 572; Halifax: 1953, c. 362; 1973, c. 924; Harnett: 1955, c. 752; 1959, c. 999; Johnston: Pub. Loc. 1927, c. 113; Pub. Loc. 1933, c. 365; Lenoir: 1941, c. 84; McDowell: 1963, c. 1199; Mitchell: 1953, c. 416; New Hanover: 1955, c. 1110; 1959, c. 1049; Northampton: 1953, c. 420, s. 4; Onslow: 1951, c. 516; Orange: 1953, c. 281, s. 3; Pasquotank: Pub. Loc. 1939, c. 102; 1943, c. 630; Pender: 1947, c. 52; Polk: 1959, c. 982; Randolph: 1965, c. 754, s. 1; Richmond: 1951, c. 267; 1959, c. 372; Rockingham: 1951, c. 430; Rowan: 1967, c. 676; Sampson: 1947, c. 747; Transylvania: 1957, c. 757; Union: Pub. Loc. 1921, c. 75; 1961, c. 305, s. 2; 1963, c. 440; Wake: Pub. Loc. 1923, c. 573; 1931, c. 137; Washington: 1963, c. 574; Watauga: 1959, c. 951.

§ 152-6. Powers, penalties, and liabilities of special coroner. — The special coroner appointed under the provisions of G.S. 152-1 shall be invested with all the powers and duties conferred upon the several coroners in respect to holding inquests over deceased bodies, and shall be subject to the penalties and liabilities imposed on the said coroners. (1903, c. 661, s. 2; Rev., s. 1050; C. S., s. 1019; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

§ 152-7. Duties of coroners with respect to inquests and preliminary hearings. — The duties of the several coroners with respect to inquests and preliminary hearings shall be as follows:

(1) Whenever it appears that the deceased probably came to his death by the criminal act or default of some person, he shall go to the place where the body of such deceased person is and make a careful investigation and inquiry as to when and by what means such deceased person came to his death and the name of the deceased, if to be found out, together with all the material circumstances attending his death, and shall make a complete record of such personal investigation: Provided, however, that the coroner shall not proceed to summon a jury as is hereinafter provided if he shall be satisfied from his personal investigation that the death of the said deceased was from natural causes, or that no person is blamable in any respect in connection with such death, and shall so find and make such finding in writing as a part of his report, giving the reason for such finding; unless an affidavit be filed with the coroner indicating blame in connection with the death of the deceased. A written report of said investigation shall be filed by the coroner with the medical examiner and the district attorney of the superior court.

(2) To empanel a jury of six persons, under oath, to make further inquiry as to the circumstances of death and to call witnesses as necessary to determine the circumstances. The coroner shall order that the names of at least 15 persons be drawn from the jury box in accordance with the procedure in G.S. 9-5. The coroner shall examine the jurors appearing in obedience to the summons, and may excuse jurors for whom service would be an extreme hardship, who would be unable to remain impartial in determining the issues, or are otherwise disqualified to serve as jurors. If the remaining jurors are less than six in number, the coroner shall cause sufficient additional names to be drawn from the jury box and have them summoned, so as to obtain the immediate attendance of at least six qualified jurors. The first six qualified jurors constitute the inquest jury.

(3) If it appears that the deceased was slain, or came to his death in such manner as to indicate any person or persons guilty of the crime in connection with the said death, then the said inquiry shall ascertain who was guilty, either as principal or accessory, or otherwise, if known; and the cause and manner of his death.

(4) Whenever in such investigations, whether preliminary or before his jury, it shall appear to the coroner or to the jury that any person or persons are culpable in the matter of such death, he shall forthwith issue his warrant for such persons and cause the same to be brought before him and the inquiry shall proceed as in the case of preliminary hearings in the district court, and in case it appears to the said coroner and the jury that such persons are probably guilty of any crime in connection with the death of the deceased, then the said coroner shall commit such persons to jail, if it appears that such persons are probably guilty of a capital crime, and in case it appears that such persons are not probably guilty of a capital crime, but are probably guilty of a lesser crime, then such coroner is to have the power and authority to fix bail for such person or persons. All such persons as are found probably guilty in such hearing shall be delivered to the keeper of the common jail for such county by the sheriff or such other officer as may perform

his duties at such hearings and committed to jail unless such persons have been allowed and given the bail fixed by such coroner.

(5) As many persons as are found to be material witnesses in the matters involved in such inquiry and hearings, and are not culpable themselves shall be bound in recognizance with sufficient surety to appear at the next superior court to give evidence, and such as may default in giving such recognizance may be by such coroner committed to jail as is provided for State witnesses in other cases.

(6) Immediately upon information of the death of a person within his county, under such circumstances as call for an investigation as provided in G.S. 130-198, the coroner shall notify the district attorney of the superior court and the medical examiner.

(7) If an inquest or preliminary hearing be ordered, to arrange for the examination of any and all witnesses including those who may be offered by the county medical examiner.

(8) To permit counsel for the family of the deceased, the solicitor of his district, or anyone designated by him, and counsel for any accused person to be present and participate in such hearing and examine and cross-examine witnesses and, whenever a warrant shall have been issued for any accused person, such accused person shall be entitled to counsel and to a full and complete hearing.

(9) To hold his inquiry where the body of the deceased shall be or at any other place in the county, and the body of the deceased need not be present at such hearing. The hearing may be adjourned to other times and places.

(10) To reduce to writing all of the testimony of all witnesses, and to have each witness to sign his testimony in the presence of the coroner, who shall attest the same, and, upon direction of the district attorney of the district, all of the testimony heard by the coroner and his jury shall be taken stenographically, and expense of such taking, when approved by the coroner and the district attorney of the district, shall be paid by the county. When the testimony is taken by a stenographer, the witness shall be caused to sign the same after it has been written out, and the coroner shall attest such signature. The attestation of all the signatures of witnesses who shall testify before the coroner shall include attaching his seal, and such statements, when so signed and attested, shall be received as competent evidence in all courts either for the purpose of contradiction or corroboration of witnesses who make the same, under the same rules as other evidence to contradict or corroborate may be now admitted. The coroner shall file a copy of all written testimony given at the hearing with the county medical examiner and with the district attorney of the superior court. (Code, s. 657; 1899, c. 478; 1905, c. 628; Rev., s. 1051; 1909, c. 707, s. 1; C. S., s. 1020; Ex. Sess. 1924, c. 65; 1955, c. 972, s. 2; 1957, c. 503, ss. 1, 2; 1967, c. 1154, s. 6; 1973, c. 47, s. 2; c. 108, s. 92; c. 558.)

Local Modification. — Nash: 1951, c. 502; Randolph: 1965, c. 754, s. 1.

Cross References. — As to certain omissions of duty punishable as for contempt, see § 5-8. As to duty to report death involving motor vehicle, see § 20-166.1. As to postmortem medicolegal examinations, see § 130-192 et seq. As to duty of coroner to hold inquests, see § 130-202.2.

Section States Historical Function of Coroner. — This section is simply a statement of the historical function of a coroner. He is by this section commanded to make an investigation whenever it appears deceased probably came to his death by criminal act. He is not required to summon a jury unless satisfied from his personal investigation that death was the result of criminal conduct. Gillikin v. United States Fid. & Guar. Co., 254 N.C. 247, 118 S.E.2d 606 (1961).

The Inquest a Judicial Proceeding. — The inquest is the coroner's court and it is an indispensable requisite that the jury which is summoned be sworn and charged by the coroner in the presence of the body of the deceased. Though the coroner is judge of the court and the power and authority to administer oaths to the witnesses rests in him, the administration of oaths is a ministerial act and may be performed by anyone by the direction and in the presence of the court. State v. Knight, 84 N.C. 789 (1881).

Coroner Has No Authority to Order Autopsy. — See opinion of Attorney General to Mr. Edgar E. Smith, 41 N.C.A.G. 212 (1971).

A coroner has no authority to perform an autopsy in cases where there is no suspicion of foul play. Gurganious v. Simpson, 213 N.C. 613, 197 S.E. 163 (1938).

Cited in State v. Colson, 274 N.C. 295, 163 S.E.2d 376 (1968), cert. denied, 393 U.S. 1087, 89 S. Ct. 876, 21 L.Ed.2d 780 (1969).

§ 152-8. Acts as sheriff in certain cases; special coroner. — If at any time there is no person properly qualified to act as sheriff in any county, the coroner of such county is hereby required to execute all process and in all other things to act as sheriff, until some person is appointed sheriff in said county; and he shall be under the same rules and regulations, and subject to the same forfeitures, fines, and penalties as sheriffs are by law for neglect or disobedience of the same duties. If at any time the sheriff of any county is interested in or a party to any proceeding in any court, and there is no coroner in such county, or if the coroner is interested in any such proceeding, then the clerk of the court from which such process issues shall appoint some suitable person to act as special coroner to execute such process, and such special coroner shall be under the same rules, regulations, and penalties as hereinabove provided for. (Code, s. 658; 1891, c. 173; Rev., s. 1052; C. S., s. 1021; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

Service of Summons by Coroner When Sheriff Is Party. — In an action to which the sheriff is a party it is proper that the summons be addressed to and served by the coroner, State v. Baird, 118 N.C. 854, 24 S.E. 668 (1896), or by his deputy since the service of a summons is the discharge of a purely ministerial duty. Yeargin v. Siler, 83 N.C. 348 (1880).

The words "any proceedings in any court" contained in the provision for deputizing special officers where the sheriff and coroner are interested, have been given a literal interpretation and the provision is held applicable to courts of justices of the peace as well as to the higher courts. Baker v. Brem, 127 N.C. 322, 37 S.E. 454 (1900).

§ 152-9. Compensation of jurors at inquest. — All persons who may be summoned to act as jurors in any inquest held by a coroner over dead bodies, and who, in obedience thereto, appear and act as such jurors, shall be entitled to the same compensation in per diem and mileage as is allowed by law to jurors acting in the superior courts. The coroners of the respective counties are authorized and empowered to take proof of the number of days of service of each juror so acting, and also of the number of miles traveled by such juror in going to and returning from such place of inquest, and shall file with the board of commissioners of the county a correct account of the same, which shall be, by such commissioners, audited and paid in the manner provided for the pay of jurors acting in the superior courts. (Code, ss. 659, 660; Rev., s. 1053; C. S., s. 1022; Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

Cross Reference. — As to fees of coroners' jurors in superior court, see now § 7A-312.

§ 152-10. Hearing by coroner in lieu of other preliminary hearing; habeas corpus. — All hearings by a coroner and his jury, as provided herein, when the accused has been arrested and has participated in such hearing, shall be in lieu of any other preliminary hearing, and such cases shall be immediately sent to the clerk of the superior court of such county and docketed by him in the same manner as warrants from magistrates. Any accused person who shall be so committed by a coroner shall have the right, upon habeas corpus, to have a judge of the superior or district court review the action of the coroner in fixing bail or declining the same. (Ex. Sess. 1924, c. 65; 1973, c. 108, s. 93.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

§ 152-11. Service of process issued by coroner. — All process, both subpoenas and warrants for the arrest of any person or persons, and orders for the summoning of a jury, in case it may appear necessary for such coroner to issue such order, shall be served by the sheriff or other lawful officer of the county in which such dead body is found, and in case it is necessary to subpoena witnesses or to arrest persons in a county other than such county in which the body of the deceased is found, then such coroner may issue his process to any other county in the State, with his official seal attached, and such process shall be served by the sheriff or other lawful officer of the county to which it is directed, but such process shall not be served outside of the county in which such dead body is found unless attested by the official seal of such coroner. (Ex. Sess. 1924, c. 65.)

Local Modification. — Randolph: 1965, c. 754, s. 1.

Chapter 152A.

County Medical Examiner.

§§ 152A-1 to 152A-12: Repealed by Session Laws 1967, c. 1154, 2. 8.

Cross References. — For provision that § 152A-9 shall remain in full force and effect in certain counties, see § 130-202.2. For other provisions as to medical examiners, see §§ 130-192 through 130-202.2.

Chapter 153.

Counties and County Commissioners.

§§ 153-1 to 153-382: Repealed by Session Laws 1973, c. 822.

Editor's Note. — This Chapter was repealed by Session Laws 1973, c. 822, which enacted new Chapter 153A, Counties. The following sections were transferred by the 1973 act to other chapters of the General Statutes: §§ 153-177 to 153-198: Transferred to former § 162-31 and §§ 162-32 to 162-49 by Session Laws 1973, c. 822, s. 3; §§ 153-295 to 153-324: Transferred to §§ 162A-64 to 162A-80 by Session Laws 1973, c. 822, s. 4.

See the Editor's note following the analysis to Chapter 153A.

Chapter 153A.

Counties.

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153A-6 to 153A-9. [Reserved.]

Article 2.

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153A-17. Existing boundaries.
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153A-19. Establishing and naming townships.
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Article 4.

Form of Government.

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153A-25. Qualifications for appointive office.
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153A-30 to 153A-33. [Reserved.]

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153A-34. Structure of boards of commissioners.
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153A-39. Selection of chairman and vice-chairman; powers and duties.
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153A-45. Adoption of ordinances.
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153A-50. Pleading and proving county ordinances.
153A-51. [Reserved.]
153A-52. Conduct of public hearing.
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Part 4. Modification in the Structure of the Board of Commissioners.

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Article 5.

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153A-76. Board of commissioners to organize county government.
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153A-81. Adoption of county-manager plan; appointment or designation of manager.
153A-82. Powers and duties of manager.
153A-83. Acting county manager.
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153A-85, 153A-86. [Reserved.]

Part 3. Administration in Counties Not Having Managers.

153A-87. Administration in counties not having managers.
153A-88. Acting department heads.
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153A-90, 153A-91. [Reserved.]

Part 4. Personnel.

153A-92. Compensation.
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Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

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153A-121. General ordinance-making power.
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Editor's Note. — Session Laws 1973, c. 822, repealed Chapter 153, Counties, and enacted in its place a new Chapter 153A. Certain other 1973 acts originally codified in Chapter 153 are included in Chapter 153A as directed in Session Laws 1973, c. 822, s. 2. Where appropriate, the historical citations to sections in the repealed Chapter have been added to corresponding sections in new Chapter 153A. A table of comparable sections for the new and repealed Chapters, prepared by the Institute of Government, appears in the Supplement to Volume 4A.

Session Laws 1973, c. 822, ss. 9 through 12, provide:

"Sec. 9. No provision of this act is intended, nor may any be construed, to affect in any way a right or interest, public or private:

"(a) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to a provision of law repealed by this act; or

"(b) Derived from or which might be sustained or preserved in reliance upon, action (including the adoption of orders, resolutions, or ordinances) taken before the effective date of this act pursuant to or within the scope of a provision of law repealed by this act.

"Sec. 10. No law repealed, expressly or by implication, before the effective date of this act and no law granting authority that has been exhausted before the effective date of this act is revived by:

"(a) The repeal in this act of any act repealing such a law; or

"(b) Any provision of this act that disclaims an intention to repeal or affect enumerated, designated, or described laws.

"Sec. 11. No provision of this act is intended, nor may any be construed, to impair the obligation of any bond, note, or coupon outstanding on the effective date of this act.

"Sec. 12. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act is abated or otherwise affected by the adoption of this act."

Session Laws 1973, c. 822, s. 13, contains a severability clause.

Many of the cases in the annotations under the various sections of this Chapter were decided under corresponding sections of repealed Chapter 153.

ARTICLE 1.

Definitions and Statutory Construction.

§ 153A-1. Definitions. — Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases defined in this section have the meaning indicated when used in this Chapter.

(1) "City" means a city as defined by G.S. 160A-1(2), except that it does not include a city that, without regard to its date of incorporation, would be disqualified from receiving gasoline tax allocations by G.S. 136-41.2(a).

(2) "Clerk" means the clerk to the board of commissioners.

(3) "County" means any one of the counties listed in G.S. 153A-10.

(4) "General law" means an act of the General Assembly that applies to all units of local government, to all counties, to all counties within a class defined by population or other criteria, to all cities, or to all cities within a class defined by population or other criteria, including a law that meets the foregoing standards but contains a clause or section exempting from its effect one or more counties, cities, or counties and cities.

(5) "Local act" means an act of the General Assembly that applies to one or more specific counties, cities, or counties and cities by name. "Local act" is interchangeable with the terms "special act," "special law," "public-local act," and "private act," is used throughout this Chapter in preference to those terms, and means a local act as defined in this subdivision without regard to the terminology employed in local acts or other portions of the General Statutes.

(6) "Publish," "publication," and other forms of the verb "to publish" mean insertion in a newspaper qualified under G.S. 1-597 to publish legal advertisements in the county. (1973, c. 822, s. 1.)

§ 153A-2. Effect on prior laws and actions taken pursuant to prior laws. —The provisions of this Chapter, insofar as they are the same in substance as laws in effect as of December 31, 1973, are intended to continue those laws in effect and not to be new enactments. The enactment of this Chapter does not require the readoption of any county or city ordinance adopted pursuant to laws that were in effect as of December 31, 1973, and that are restated or revised in this Chapter. The provisions of this Chapter do not affect any act heretofore done, any liability incurred, any right accrued or vested, or any suit or prosecution begun or cause of action accrued as of January 1, 1974. (1973, c. 822, s. 1.)

§ 153A-3. Effect of Chapter on local acts. — (a) Except as provided in this section, nothing in this Chapter repeals or amends a local act in effect as of January 1, 1974, or any portion of such an act, unless this Chapter or a subsequent enactment of the General Assembly clearly shows a legislative intent to repeal or supersede that local act.

(b) If this Chapter and a local act each provide a procedure that contains every action necessary for the performance or execution of a power, right, duty, function, privilege, or immunity, the two procedures may be used in the alternative, and a county may follow either one.

(c) If this Chapter and a local act each provide a procedure for the performance or execution of a power, right, duty, function, privilege, or immunity, but the local act procedure does not contain every action necessary for the performance or execution, the two procedures may be used in the alternative, and a county may follow either one; but the local act procedure shall be supplemented as necessary by this Chapter's procedure. If a local act procedure is being supplemented in such a manner, and there is a conflict or inconsistency between the local act procedure and this Chapter's procedure, the local act procedure shall be followed.

(d) If a power, right, duty, function, privilege, or immunity is conferred on counties by this Chapter, and a local act enacted earlier than this Chapter omits or expressly denies or limits the same power, right, duty, function, privilege, or immunity, this Chapter supersedes the local act. (1973, c. 822, s. 1.)

§ 153A-4. Broad construction. — It is the policy of the General Assembly that the counties of this State should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of local acts shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power. (1973, c. 822, s. 1.)

§ 153A-5. Statutory references deemed amended to conform to Chapter. —If a reference is made in another portion of the General Statutes, in a local act, or in a city or county ordinance, resolution, or order to a portion of Chapter 153, and the reference is to Chapter 153 as it existed immediately before February 1, 1974, the reference is deemed amended to refer to that portion of this Chapter that most nearly corresponds to the repealed or superseded portion of Chapter 153. (1973, c. 822, s. 1.)

§§ 153A-6 to 153A-9: Reserved for future codification purposes.

ARTICLE 2.

Corporate Powers.

§ 153A-10. State has 100 counties. — North Carolina has 100 counties. They are: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, Bertie, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Camden, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Clay, Cleveland, Columbus, Craven, Cumberland, Currituck, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, Macon, Madison, Martin, McDowell, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey. (1973, c. 822, s. 1.)

§ 153A-11. Corporate powers. — The inhabitants of each county are a body politic and corporate under the name specified in the act creating the county. Under that name they are vested with all the property and rights of property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property and rights of property, real and personal, that may be devised, bequeathed, sold, or in any manner conveyed, dedicated to, or otherwise acquired by the corporation, and from time to time may hold, invest, sell, or dispose of the property and rights of property; may have a common seal and alter and renew it at will; and have and may exercise in conformity with the laws of this State county powers, rights, duties, functions, privileges, and immunities of every name and nature. (1868, c. 20, ss. 1, 2, 3, 8; 1876-7, c. 141, s. 1; Code, ss. 702, 703, 704, 707; Rev., ss. 1309, 1310, 1318; C. S., ss. 1290, 1291, 1297; 1973, c. 822, s. 1.)

Editor's Note. — For note on abrogation of contractual sovereign immunity, see 12 Wake Forest L. Rev. 1082 (1976).

Counties Are Bodies Politic and Corporate to Exercise Powers Granted. — Counties are bodies politic and corporate to exercise as agents for the State only such powers as are prescribed by statute and those which are necessarily implied therefrom by law, essential to the exercise of the powers specifically conferred. O'Neal v. Wake County, 196 N.C. 184, 145 S.E. 28 (1928). See Board of Comm'rs v. Hanchett Bond Co., 194 N.C. 137, 138 S.E. 614 (1927).

They Are Governmental Agencies. — The Constitution recognizes the existence of counties as governmental agencies. White v. Commissioners of Chowan, 90 N.C. 437 (1884); Woodall v. Western Wake Hwy. Comm'n, 176 N.C. 377, 97 S.E. 226 (1918).

And Part of the State Government. — Counties are of, and constitute a part of, the State government. Their chief purpose is to establish its political organization, and effectuate the local civil administration of its powers and authority. They are in their general nature governmental—mere instrumentalities of government—and possess corporate powers adapted to its purposes. It is not their purpose to create civil liability on their part, and become answerable to individuals civilly or otherwise. Manuel v. Board of Comm'rs, 98 N.C. 9, 3 S.E. 829 (1887), citing White v. Commissioners of Chowan, 90 N.C. 437 (1884); McCormac v. Commissioners of Robeson, 90 N.C. 441 (1884).

Counties are a branch of the State government. Bell v. Commissioners of Johnston County, 127 N.C. 85, 37 S.E. 136 (1900).

Power of Legislature to Create. — Under our Constitution, the legislature is given power to create special public quasi corporations for governmental purposes in certain designated portions of the State's territory subject to like control, and in the exercise of such power county lines may be disregarded. Board of Trustees v. Webb, 155 N.C. 379, 71 S.E. 520 (1911).

It is within the power of the legislature to subdivide the territory of the State and invest the inhabitants of such subdivisions with the corporate functions, more or less extensive and varied in their character, for the purpose of government. The legislature alone can create counties, directly or indirectly, and invest them, and agencies in them, with powers, corporate or otherwise in their nature, to effectuate the purposes of the government, whether these be local or general, or both. Such organizations are intended to be instrumentalities and agencies employed to aid in the administration of the government, and are always under the control of the power that created them unless the same shall be restricted by some constitutional limitations. McCormac v. Commissioners of Robeson, 90 N.C. 441 (1884); Board of Trustees v. Webb, 155 N.C. 379, 71 S.E. 520 (1911); Commissioners of Cumberland County v. Commissioners of Harnett County, 157 N.C. 514, 73 S.E. 195 (1911); Woodall v. Western Wake Hwy. Comm'n, 176 N.C. 377, 97 S.E. 226 (1918).

The powers of the legislature over counties is very broad and far-reaching, giving to it practically full control of them. Jones v. Commissioners, 137 N.C. 579, 50 S.E. 291 (1905); Woodall v. Western Wake Hwy. Comm'n, 176 N.C. 377, 97 S.E. 226 (1918).

It May Confer Corporate Powers and Impose Liability. — The legislature, subject to constitutional limitations, may confer upon counties such corporate powers to make contracts, create civil liabilities, and serve such business purposes, as it may deem expedient and wise, and may make them answerable in damages for the negligence of their officers and agents in failing to properly exercise the powers with which they are charged, or for exercising them improperly, to the injury of individuals. But such corporate authority and liability must be especially created by and appear from statutory provision, expressed in terms or necessarily implied. Manuel v. Board of Comm'rs, 98 N.C. 9, 3 S.E. 829 (1887).

May Direct Performance of Duties. — The legislature may direct counties to perform as duties all things which it can empower them to do. State ex rel. Tate v. Board of Comm'rs, 122 N.C. 812, 30 S.E. 352 (1898).

May Change Functions. — The functions of counties are not always the same, and they may be enlarged, abridged or modified at the will of the legislature. White v. Commissioners of Chowan, 90 N.C. 437 (1884).

And May Alter or Abolish Counties. — Counties are legislative creations and subject to be changed, even abolished, or divided and subdivided at the will of the General Assembly.

Jones v. Commissioners, 143 N.C. 59, 55 S.E. 427 (1906); Board of Trustees v. Webb, 155 N.C. 379, 71 S.E. 520 (1911); Woodall v. Western Wake Hwy. Comm'n, 176 N.C. 377, 97 S.E. 226 (1918).

Construction of Powers Granted to Counties. — Under former statutes it was held that counties, as corporations which exercise delegated governmental authority, must be confined to a strict construction of the statutes granting their powers, and that there was nothing in the nature of their duties to give rise to the implication that the State intended to clothe them with any other power than that expressly conferred, and the further right to do what was necessary to the complete exercise of the express powers. Vaughn v. Commissioners of Forsyth County, 118 N.C. 636, 24 S.E. 425 (1896). As to broad construction of this Chapter and of local acts, see § 153A-4.

Counties as Municipal Corporations. — By Art. VII of the Constitution of 1868, counties were regarded as municipal corporations. Winslow v. Commissioners of Perquimans County, 64 N.C. 218 (1870).

A county is a municipal corporation created by law for public and political purposes, and constitutes a part of the government of the State. Its powers are expressly defined by law, and, where they are not fixed by the Constitution, they may be enlarged or modified at any time by the legislature. Gooch v. Gregory, 65 N.C. 142 (1871).

Counties Distinguished from Cities and Towns. — Counties are not, in a strictly legal sense, municipal corporations, like cities and towns. Their purposes are more general and partake more largely of the purposes and powers of government proper. Manuel v. Board of Comm'rs, 98 N.C. 9, 3 S.E. 829 (1887); Bell v. Commissioners of Johnston County, 127 N.C. 85, 37 S.E. 136 (1900); Martin v. Board of Comm'rs, 208 N.C. 354, 180 S.E. 777 (1935).

Commissioners' Supervisory Control. — Under the Constitution and public laws of North Carolina the boards of county commissioners are generally given supervision and control of governmental matters in the several counties. Bunch v. Commissioners of Randolph County, 159 N.C. 335, 74 S.E. 1048 (1912).

County Must Act through Commissioners in Legal Session. — For a county to exercise its power to contract, it is essential that it act through its county commissioners as a body convened in legal session, regular, adjourned or special, and, as a rule, authorized meetings are prerequisite to corporate action, which should be based upon deliberate conference and intelligent discussion of proposed measures. O'Neal v. Wake County, 196 N.C. 184, 145 S.E. 28 (1928); Davenport v. Pitt County Drainage Dist., 220 N.C. 237, 17 S.E.2d 1 (1941); Jefferson Std. Life Ins. Co. v. Guilford County, 225 N.C. 293, 34 S.E.2d 430 (1945).

And Not in Joint Meeting with Other Governmental Agencies. — The commissioners of a county are without authority, constitutional or statutory, to enter into a joint meeting with other State governmental agencies functioning as entirely separate departments respectively of the county and the State, and therein make a binding corporate contract by the adoption of a joint verbal agreement to pledge the faith and credit of the county for its part in the payment for the employment of a person to render service in the capacity of a detective to determine and procure evidence against those who have committed a criminal offense. O'Neal v. Wake County, 196 N.C. 184, 145 S.E. 28 (1928).

In order to make a binding pecuniary obligation on a county under the former statute imposing the general duty on county commissioners to provide for the poor, there must be a contract to that effect, express in its terms, or the service must be done at the express request of an officer or agent charged with the duty and having the power to make contracts concerning it. Copple v. Commissioners, 138 N.C. 127, 50 S.E. 574 (1905).

Suit in Name of County. — Where a county is the real party in interest, it must sue and be sued in its own name. Lenoir County v. Crabtree, 158 N.C. 357, 74 S.E. 105 (1912); Fountain v. County of Pitt, 171 N.C. 113, 87 S.E. 990 (1916); Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

A county is not required in an action for mandatory injunction to bring the suit in the name of the county commissioners. Such a suit should be brought in the name of the county. Lenoir County v. Crabtree, 158 N.C. 357, 74 S.E. 105 (1912).

In the absence of a refusal of the board of commissioners of a county to institute an action in its behalf, the action must be instituted in the name of the county or on relation of the county. Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

Under a former statute all actions and proceedings by or against a county in its corporate capacity were required to be in the name of the board of commissioners. Pegram v. Commissioners of Cleveland County, 65 N.C. 114 (1871); Askew v. Pollock, 66 N.C. 49 (1872); Fountain v. County of Pitt, 171 N.C. 113, 87 S.E. 990 (1916).

And under such statute an action upon a county treasurer's bond to recover an amount alleged to be due the county was required to be brought on the relation of the commissioners, and not by the successor treasurer. State ex rel. Wescott v. Thees, 89 N.C. 55 (1883).

When an order to show cause, which is in the nature of an alternative writ of mandamus, could be brought against the board of commissioners, it was not to be directed to the individuals composing the board. It was only in case of disobedience that they could be proceeded against individually. Askew v. Pollock, 66 N.C. 49 (1872).

Liability of Counties Generally. — Counties may be sued only in such cases and for such causes as may be allowed by statute. Bell v. Commissioners of Johnston County, 127 N.C. 85, 37 S.E. 136 (1900).

Counties are not ordinarily liable to be sued civilly for the manner in which they exercise, or fail to exercise, their corporate powers. White v. Commissioners of Chowan, 90 N.C. 437 (1884).

A county was held not liable in damages for an injury occasioned by a defective bridge forming a part of the highway. Moffitt v. City of Asheville, 103 N.C. 237, 9 S.E. 695 (1889).

Liability for Torts of Officers or Agents. — Counties are not liable in damages for the torts of their officials, in the absence of statutory provisions giving a right of action. Keenan v. Commissioners of New Hanover County, 167 N.C. 356, 83 S.E. 556 (1914).

Generally a county is not liable for damages sustained by individuals by reason of the neglect of its officers or agents. Manuel v. Board of Comm'rs, 98 N.C. 9, 3 S.E. 829 (1887).

See § 153A-435.

Form of Action. — Where a good cause of action exists, a county may be sued in any form appropriate to the cause of action, and its liability does not differ as respects the form of the action from that of a private corporation or of an individual. Winslow v. Commissioners of Perquimans County, 64 N.C. 218 (1870).

Venue of Action. — Under the former statute which provided that a county should "sue and be sued in the name of the board of commissioners," actions against a board of county commissioners were required to be brought in the county of such commissioners. Jones v. Board of Comm'rs, 69 N.C. 412 (1873); Steele v. Commissioners of Rutherford, 70 N.C. 137 (1874).

Power to Compromise. — The power to sue and to defend suits carries with it, by necessary implication, the power to make bona fide compromise adjustments of such suits. Board of Comm'rs v. Tollman, 145 F. 753 (4th Cir. 1906).

Power to Enter Consent Judgment.—Under this section the county commissioners have the authority to assent to the entry of a consent judgment in an action pending against the county, when such judgment is entered in good faith, and is free from fraud, etc., a consent judgment being a contract of the parties spread upon the records with the approval and sanction of a court of competent jurisdiction. Weaver v. Hampton, 204 N.C. 42, 167 S.E. 484 (1933).

Property and Revenue of County Not Subject to Execution. — A county can only acquire and hold property for necessary public purposes and for the benefit of all its citizens, and the principles of public policy prevent such property from being sold under execution to satisfy the debt of an individual. Hughes v. Commissioners of Craven County, 107 N.C. 598, 12 S.E. 465 (1890). See Gooch v. Gregory, 65 N.C. 142 (1871).

The county revenue is safe from seizure by creditors, or even for taxes due the federal government, because to admit the right to appropriate such revenue in satisfaction of a claim would be to concede the power to destroy the State government by depriving its agencies of the means of performing their proper functions. Subject to the restrictions contained in the federal Constitution, the State is a sovereignty, and it is essential to its preservation to give to all property held for it by such agencies as counties, the same protection as is given to that held in its own name. Hughes v. Commissioners of Craven County, 107 N.C. 598, 12 S.E. 465 (1890); Vaughn v. Commissioners of Forsyth County, 118 N.C. 636, 24 S.E. 425 (1896).

Satisfaction of Judgment. — A plaintiff who has obtained a judgment against a county is not entitled to an execution against it. His remedy is by writ of mandamus against the board of commissioners of the county to compel them to levy a tax for the satisfaction of the judgment. Gooch v. Gregory, 65 N.C. 142 (1871).

Ordinarily, the only remedy of a judgment creditor of a county is a writ of mandamus to compel its commissioners to levy a tax to pay the debt. Hughes v. Commissioners of Craven County, 107 N.C. 598, 12 S.E. 465 (1890), citing Pegram v. Commissioners of Cleveland County, 64 N.C. 557 (1870); Lutterloh v. Board of Comm'rs, 65 N.C. 403 (1871); Rogers v. Jenkins, 98 N.C. 129, 3 S.E. 821 (1887).

When Mandamus Unnecessary. — An action may be maintained against the county commissioners establishing a debt against the county without asking for a writ of mandamus, where it appears that the county has property subject to trusts, or such as can be reached only by proceedings supplemental to execution. Hughes v. Commissioners of Craven County, 107 N.C. 598, 12 S.E. 465 (1890).

Stated in Smith v. State, 289 N.C. 303, 222 S.E.2d 412 (1976).

§ 153A-12. Exercise of corporate power. — Except as otherwise directed by law, each power, right, duty, function, privilege and immunity of the corporation shall be exercised by the board of commissioners. A power, right, duty, function, privilege, or immunity shall be carried into execution as provided by the laws of the State; a power, right, duty, function, privilege, or immunity that is conferred or imposed by law without direction or restriction as to how it is to be exercised or performed shall be carried into execution as provided by ordinance or resolution of the board of commissioners. (1868, c. 20, ss. 1, 2; 1876-7, c. 141, s. 1; Code, ss. 702, 703; Rev., s. 1309; C. S., s. 1290; 1973, c. 882, s. 1.)

§ 153A-13. Continuing contracts. — A county may enter into continuing contracts, some portion or all of which are to be performed in ensuing fiscal years. In order to enter into such a contract, the county must have sufficient funds appropriated to meet any amount to be paid under the contract in the fiscal year in which it is made. In each year, the board of commissioners shall appropriate sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into. (1959, c. 250; 1973, c. 822, s. 1.)

§ 153A-14. Grants from other governments. — A county may contract for and accept grants and loans as permitted by G.S. 160A-17.1. (1973, c. 822, s. 1.)

§§ 153A-15, 153A-16: Reserved for future codification purposes.

ARTICLE 3.

Boundaries.

§ 153A-17. Existing boundaries. — The boundaries of each county shall remain as presently established, until changed in accordance with law. (1973, c. 822, s. 1.)

§ 153A-18. Uncertain or disputed boundary. — (a) If two or more counties are uncertain as to the exact location of the boundary between them, they may cause the boundary to be surveyed, marked, and mapped. The counties may appoint special commissioners to supervise the surveying, marking, and mapping. A commissioner so appointed or a person surveying or marking the boundary may enter upon private property to view and survey the boundary or to erect boundary markers. Upon ratification of the survey by the board of commissioners of each county, a map showing the surveyed boundary shall be recorded in the office of the register of deeds of each county in the manner provided by law for the recordation of maps or plats and in the Secretary of State's office. The map shall contain a reference to the date of each resolution of ratification and to the page in the minutes of each board of commissioners where the resolution may be found. Upon recordation, the map is conclusive as to the location of the boundary.

(b) If two or more counties dispute the exact location of the boundary between them, and the dispute cannot be resolved pursuant to subsection (a) of this section, any of the counties may apply to a resident or presiding superior court judge in the judicial district or districts in which the counties are located for appointment of a boundary commission. The application shall identify the disputed boundary and ask that a boundary commission be appointed. Upon receiving the application, the court shall set a date for a hearing on whether to appoint the commission. The court shall cause notice of the hearing to be served on the other county or counties. If, after the hearing, the court finds that the location of the boundary is disputed, it shall appoint a boundary commission.

The commission shall consist of one resident of each disputing county and a resident of some other county. The court may appoint one or more surveyors to assist the commission. The commission shall locate, survey, and map and may mark the disputed boundary. To do so it may take evidence and hear testimony, and any commissioner and any person surveying or marking the boundary may enter upon private property to view and survey the boundary or to erect boundary markers. Within 45 days after the day it is appointed, unless this time is extended by the court, the commission shall make its report (which shall include a map of the surveyed boundary) to the court. To be sufficient, the report must be concurred in by a majority of the commissioners. If the court is satisfied that the commissioners have made no error of law, it shall ratify the report, after which the map shall be recorded in the office of the register of deeds of each county in the manner provided by law for the recordation of maps or plats and in the Secretary of State's office. Upon recordation, the map is conclusive as to the location of the boundary.

The disputing counties shall divide equally the costs of locating, surveying, marking, and mapping the boundary, unless the court finds that an equal division of the costs would be unjust. In that case the court may determine the division of costs. (1836, c. 3; R. C., c. 27; Code, s. 721; Rev., s. 1322; C. S., s. 1299; 1925, c. 251; 1973, c. 822, s. 1.)

§ 153A-19. Establishing and naming townships. — A county may by resolution establish and abolish townships, change their boundaries, and prescribe their names. The current boundaries of each township within a county shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1973, c. 822, s. 1.)

Legislative Power to Subdivide and Bestow Corporate Functions. — It is within the power of the legislature to subdivide the territory of the State and invest the inhabitants of such subdivisions with corporate functions. It is not essential that such subdivisions of territory shall be created directly by legislative enactment. Certain agencies may be required by statute to establish them. McCormac v. Commissioners of Robeson, 90 N.C. 441 (1884).

Townships are within the power and control of the General Assembly, just as are counties, cities, towns and other municipal corporations. It may confer upon them, or any single one of them, corporate powers, with the view to accomplish any lawful purpose. Such powers may be conferred for a single purpose as well as many. Brown v. Commissioners of Hertford, 100 N.C. 92, 5 S.E. 178 (1888); Jones v. Commissioners of Person County, 107 N.C. 248, 12 S.E. 69 (1890).

Former Corporate Powers and Trustees of Townships. — As to former corporate powers of townships and former boards of township trustees, see Mitchell v. Board of Trustees, 71 N.C. 400 (1874); Wallace v. Board of Trustees, 84 N.C. 164 (1881); Jones, Gaskill & Co. v. Commissioners of Rowan, 85 N.C. 278 (1881); Brown v. Commissioners of Hertford, 100 N.C. 92, 5 S.E. 178 (1888); Jones v. Commissioners of Person County, 107 N.C. 248, 12 S.E. 69 (1890). As to liability of trustees for torts, see Price v. Board of Trustees, 172 N.C. 84, 89 S.E. 1066 (1916).

County Officers May Be Charged with Township Duties. — The townships are constituent parts of the county organization, and the county officers may well be charged with duties and authority in respect to debts they may be allowed by statute to contract. Jones v. Commissioners of Person County, 107 N.C. 248, 12 S.E. 69 (1890).

County Bonds Not to Be Issued upon Note of One Township. — While the building of public roads has been held a necessary expense, the application of the principle may not be extended to instances where a statute requires the county to issue its bonds for road purposes to obtain aid for a township or local taxing district therein, upon the approval of the voters of the particular district alone, and without benefit to the others. Commissioners of Johnston County v. Lacy, 174 N.C. 141, 93 S.E. 482 (1917).

Commissioners' Power to Issue Township Bonds. — The county commissioners are not authorized to issue bonds on the credit of a township for the construction of a railroad. Graves v. Commissioners, 135 N.C. 49, 47 S.E. 134 (1904).

§ 153A-20. Map of electoral districts. — If a county is divided into electoral districts for the purpose of nominating or electing persons to the board of commissioners, the current boundaries of the electoral districts shall at all times be drawn on a map, or set out in a written description, or shown by a combination of these techniques. This current delineation shall be available for public inspection in the office of the clerk. (1973, c. 822, s. 1.)

§ 153A-21: Repealed by Session Laws 1973, c. 884.

Editor's Note. — Session Laws 1975, c. 389, applicable only to Robeson County, reenacted this section.

§§ 153A-22 to 153A-24: Reserved for future codification purposes.

ARTICLE 4.

Form of Government.

Part 1. General Provisions.

§ 153A-25. Qualifications for appointive office. — The board of commissioners may fix qualifications for any appointive office, including a requirement that a person serving in such an office reside within the county. The board may not waive qualifications fixed by law for an appointive office but may fix additional qualifications for that office. (1973, c. 822, s. 1.)

§ 153A-26. Oath of office. — Each person elected by the people or appointed to a county office shall, before entering upon the duties of the office, take and subscribe the oath of office prescribed in Article VI, Sec. 7 of the Constitution. The oath of office shall be administered by some person authorized by law to administer oaths and shall be filed with the clerk.

On the first Monday in December following each general election at which county officers are elected, the persons who have been elected to county office in that election shall assemble at the regular meeting place of the board of commissioners. At that time each such officer shall take and subscribe the oath of office. An officer not present at this time may take and subscribe the oath at a later time. (1868, c. 20, s. 8; 1874-5, c. 237, s. 3; Code, ss. 707, 708; 1895, c. 135, ss. 3, 4; Rev., ss. 1316, 1318; C. S., ss. 1295, 1297; 1965, c. 26; 1973, c. 822, s. 1.)

§ 153A-27. Vacancies on the board of commissioners. — If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any five registered voters of the county. If for any other reason the remaining members of the board do not fill a vacancy within 60 days after the day the vacancy occurs, the clerk shall immediately report the vacancy to the clerk of superior court of the county. The clerk of superior court shall, within 10 days after the day the vacancy is reported to him, fill the vacancy.

If the member being replaced was serving a two-year term, or was in the last two years of a four- or six-year term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 30 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated, either to the remainder of the unexpired term or, if the term has expired, to a full term.

To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts. The board of commissioners or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling a vacancy, but neither the board nor the clerk of the superior court is bound by the committee's recommendation. (Code, s. 719; 1895, c. 135, s. 7; Rev., s. 1314; 1909, c. 490, s. 1; C. S., s. 1294; 1959, c. 1325; 1965, cc. 239, 382; 1967, cc. 7, 424, 439, 1022; 1969, cc. 82, 222; 1971, c. 743, s. 1; 1973, c. 822, s. 1.)

Authority to Accept Resignation. — Under a former statute which authorized the clerk of the superior court to fill vacancies on boards of commissioners in all cases, it was held that a tender of resignation by a county commissioner to the clerk of the superior court was a tender to the proper authority. While the mere filing of the resignation did not vacate the office, its acceptance by the clerk was final, and after its acceptance the commissioner had no power to withdraw it. Rockingham County v. Luten Bridge Co., 35 F.2d 301 (4th Cir. 1929).

§ 153A-28. Compensation of board of commissioners. — The board of commissioners may fix the compensation and allowances of the chairman and other members of the board by inclusion of the compensation and allowances in and adoption of the budget ordinance. In addition, if the chairman or any other member of the board becomes a full-time county official, pursuant to G.S. 153A-81 or 153A-84, his compensation and allowances may be adjusted at any time during his service as a full-time official, for the duration of that service. (Code, s. 709; Rev., s. 2785; 1907, c. 500; C. S., s. 3918; 1969, c. 180, s. 1; 1971, c. 1125, s. 1; 1973, c. 822, s. 1.)

Authority of the county commissioners to amend the county budget to raise or lower their compensation at any time during the fiscal year is limited by their authority to fix their compensation in the adoption of the annual budget. Opinion of Attorney General to Mr. James C. Fox, New Hanover County Attorney, 42 N.C.A.G. 132 (1972).

When Mileage Allowance Erroneous but Innocent. — Where a board of county commissioners audited in favor of its members for mileage, to which they were not entitled and it was found as a fact that they did so under advice and without any corrupt or fraudulent motive, it was held that the members of the board were not indictable either under § 14-234 or at common law. State v. Norris, 111 N.C. 652, 16 S.E. 2 (1892).

§ 153A-29: Repealed by Session Laws 1975, c. 514, s. 17.

§§ 153A-30 to 153A-33: Reserved for future codification purposes.

Part 2. Structure of the Board of Commissioners.

§ 153A-34. Structure of boards of commissioners. — Each county is governed by a board of commissioners. The structure and manner of election of the board of commissioners in each county shall remain as it is on February 1, 1974, until changed in accordance with law. (Rev., s. 1311; C. S., s. 1292; 1973, c. 822, s. 1.)

Editor's Note. — Session Laws 1973, c. 822, s. 2, provides, in part, that the repeal of former G.S. 153-4 and 153-5 does not affect in any way the structure or manner of election of any board of county commissioners the structure or manner of election of which was established by those sections, and that each board of commissioners shall continue to have the same structure and manner of election as it has on the effective date of the 1973 act until that structure or manner of election is changed in accordance with law.

For note on one man, one vote as applied to local governing bodies, see 47 N.C.L. Rev. 413 (1969).

Board Has Perpetual Existence. — The board of commissioners of a county has a perpetual existence, continued by members who succeed each other, and the body remains the same, notwithstanding a change in the individuals who compose it. Pegram v. Commissioners of Cleveland County, 65 N.C. 114 (1871).

Powers of De Facto Board. — An old board of commissioners, holding over, as de facto officers, has the right and the duty of performing, to the fullest extent, all the appropriate functions of office. State ex rel. Jones v. Jones, 80 N.C. 127 (1879).

Remedies to Try Title to Office. — As to remedies to try title to the office of county commissioner, see Lyon v. Board of Comm'rs, 120 N.C. 237, 26 S.E. 929 (1897); State ex rel. Houghtalling v. Taylor, 122 N.C. 141, 29 S.E. 101 (1898). See also §§ 1-511, 1-515, and notes.

Board Has Only Such Powers as Statute Prescribes. — The board of commissioners in a county possesses only those powers which have been prescribed by statute and those necessarily implied by law, and no others. This is the general rule. Fidelity & Deposit Co. v. Fleming, 132 N.C. 332, 43 S.E. 899 (1903).

Exercise of Powers by Board Is Exercise by County. — The board's exercise of statutory powers is, in contemplation of law, the exercise of such powers by the county. Board of Comm'rs v. Hanchett Bond Co., 194 N.C. 137, 138 S.E. 614 (1927).

Powers Exercised by Majority. — A majority of the commissioners constitute the legal body, and generally a majority of the members of the legally organized body can exercise the powers delegated to the county. Cleveland Cotton Mills v. Commissioners of Cleveland County, 108 N.C. 678, 13 S.E. 271 (1891).

All Duties and Powers Equally Important. —There is no grade among the duties and powers of county commissioners, and no preference is given to one over another. Long v. Commissioners of Richmond County, 76 N.C. 273 (1877).

The board of commissioners has the power and duty of auditing and passing upon the validity of claims. If they refuse to audit or act upon a claim, mandamus will lie to compel them to do so. If after a hearing they refuse to allow or issue a warrant for its payment, an action will lie against the commissioners to establish the debt and for such other relief as the party may be entitled to. Reed v. Farmer, 211 N.C. 249, 189 S.E. 882 (1937), citing Martin v. Clark, 135 N.C. 178, 47 S.E. 397 (1904).

Board May Correct Clerical Error in Record. — Where the record of the board of county commissioners, through a clerical error, states that a tax levy for general county purposes is 20 cents on the $100 valuation of property, this error may subsequently be corrected by the board, at its own instance, to correctly show that in fact the levy was actually made for 15 cents for general county purposes, 5 cents thereof being for the improvement of the courthouse and county home, and thus within the constitutional requirement. Norfolk S.R.R. v. Forbes, 188 N.C. 151, 124 S.E. 132 (1924).

Personal Liability of Commissioners Generally. — Where the legislature has created certain duties to be performed by the county commissioners, and has expressly imposed a personal liability upon their failure to perform some of them but not as to others, such liability only attaches where it is expressly so declared. Fore v. Feimster, 171 N.C. 551, 88 S.E. 977 (1916).

Personal Liability for Negligent Performance or Omission of Ministerial Duties. — County commissioners are held to an individual liability in the negligent performance of, or negligent omission to perform, a purely ministerial duty, to a person specially injured thereby, when the means to do so are available and when it does not involve the exercise of a discretionary or judicial power conferred upon them by statute. Hipp v. Farrell, 169 N.C. 551, 86 S.E. 570 (1915).

Personal Liability for Judicial and Discretionary Acts. — Public officers are not personally liable to persons specially injured by their acts done in the exercise of judicial or discretionary powers conferred on them by statute, unless it is alleged and shown that in doing the acts complained of they did so corruptly and with malice. Hipp v. Farrell, 169 N.C. 551, 86 S.E. 570 (1915).

When Commissioners Act Intra Vires. — A court has no power to interfere with the domestic administration of affairs of a county, so long as the board of commissioners acts intra vires. Long v. Commissioners of Richmond County, 76 N.C. 273 (1877).

Retaining the consideration of an ultra vires contract can impose no contractual liability upon a municipal corporation of this character. Berlin Iron Bridge Co. v. Board of Comm'rs, 111 N.C. 317, 16 S.E. 314 (1892), citing Weir v. Page, 109 N.C. 220, 13 S.E. 773 (1891).

Mandamus to Compel Bond Issue. — Mandamus will lie against county commissioners who refuse to issue bonds, as required by an act of the legislature. Jones v. Commissioners, 137 N.C. 579, 50 S.E. 291 (1905).

When Membership of Board Changes between Order and Service of Mandamus. — When a writ of mandamus is obtained against a board of commissioners, and there is a change in the individual members between the time when the writ is ordered and when it is served, those who compose the board at the time of service must obey it. Pegram v. Commissioners of Cleveland County, 65 N.C. 114 (1871).

§§ 153A-35 to 153A-38: Reserved for future codification purposes.

Part 3. Organization and Procedures of the Board of Commissioners.

§ 153A-39. Selection of chairman and vice-chairman; powers and duties. —At its first regular meeting in December of each year, the board of commissioners shall choose one of its members as chairman for the ensuing year, unless the chairman is elected as such by the people or otherwise designated by law. The board shall also at that time choose a vice-chairman to act in the absence or disability of the chairman. If the chairman and the vice-chairman are both absent from a meeting of the board, the members present may choose a temporary chairman.

The chairman is the presiding officer of the board of commissioners. Unless excused by rule of the board, the presiding officer has the duty to vote on any question before the board, but he has no right to break a tie vote in which he participated. (Code, s. 706; Rev., s. 1317; C. S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1.)

§ 153A-40. Regular and special meetings. — (a) The board of commissioners shall hold a regular meeting at least once a month, and may hold more frequent regular meetings. The board may by resolution fix the time and place of its regular meetings. If such a resolution is adopted, at least 10 days before the first meeting to which the resolution is to apply, the board shall cause a copy of it to be posted on the courthouse bulletin board and a summary of it to be published. If no such resolution is adopted, the board shall meet at the courthouse on the first Monday of each month, or on the next succeeding business day if the first Monday is a holiday.

If use of the courthouse or other designated regular meeting place is made temporarily impossible, inconvenient, or unwise, the board may change the time or place or both of a regular meeting or of all regular meetings within a specified period of time. The board shall cause notice of the temporary change to be posted at or near the regular meeting place and shall take any other action it considers helpful in informing the public of the temporary change.

The board may adjourn a regular meeting from day to day or to a day certain until the business before the board is completed.

(b) The chairman or a majority of the members of the board may at any time call a special meeting of the board of commissioners by signing a written notice stating the time and place of the meeting and the subjects to be considered. The person or persons calling the meeting shall cause the notice to be delivered to the chairman and each other member of the board or left at the usual dwelling place of each at least 48 hours before the meeting and shall cause a copy of the notice to be posted on the courthouse bulletin board at least 48 hours before the meeting. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or those not present have signed a written waiver.

If a special meeting is called to deal with an emergency, the notice requirements of this subsection do not apply. However, the person or persons calling such a special meeting shall take reasonable action to inform the other members and the public of the meeting. Only business connected with the emergency may be discussed at a meeting called pursuant to this paragraph.

(c) The board of commissioners shall hold all its meetings within the county. (Code, s. 706; Rev., s. 1317; C. S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1.)

Statute Construed as Directory. — The statute setting the days for meetings was directory and was intended to forbid the commissioners from receiving compensation for attendance on other days than regular meetings. It did not disable the commissioners from acting at other times on due notice to all concerned. People ex rel. McNeill v. Green, 75 N.C. 329 (1876).

Hence, commissioners elected by the county commissioners at an adjourned meeting subject to the call of the chairman were at least de facto officers, whose title could not be collaterally attacked. Tripp v. Commissioners of Pitt County, 158 N.C. 180, 73 S.E. 896 (1912).

Stated in News & Observer Publishing Co. v. Interim Bd. of Educ., 29 N.C. App. 37, 223 S.E.2d 580 (1976).

§ 153A-41. Procedures. — The board of commissioners may adopt its own rules of procedure, in keeping with the size and nature of the board and in the spirit of generally accepted principles of parliamentary procedure. (Code, s. 706; Rev., s. 1317; C. S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1.)

§ 153A-42. Minutes to be kept; ayes and noes. — The clerk shall keep full and accurate minutes of the proceedings of the board of commissioners, which shall be available for public inspection. The clerk shall record the results of each vote in the minutes; and upon the request of any member of the board, the ayes and noes upon any question shall be taken and recorded. (Code, s. 712; 1905, c. 530; Rev., s. 1325; C. S., s. 1310; 1953, c. 973, s. 3; 1973, c. 822, s. 1.)

Correction of Record. — The record of a board of county commissioners may be corrected nunc pro tunc to speak the truth by the board itself. Norfolk S.R.R. v. Reid, 187 N.C. 320, 121 S.E. 534 (1924).

Where the county commissioners exercised their statutory authority to loan county funds to the State Highway Commission (now the Board of Transportation), anticipating the allotment of State funds for the building of highways within the county, and lawfully contracted for that purpose, they could not, after the passage of a later act taking away this power, materially change the contract, but the county commissioners nunc pro tunc could correct the entries on their minutes theretofore duly passed and entered of record so as to make the entry speak the truth as to what had been regularly done, and to this end parol evidence was admissible, the time of the correction so made relating back to the time the entry should have been correctly made. Oliver v. Board of Comm'rs, 194 N.C. 380, 139 S.E. 767 (1927).

§ 153A-43. Quorum. — A majority of the membership of the board of commissioners constitutes a quorum. The number required for a quorum is not affected by vacancies. If a member has withdrawn from a meeting without being excused by majority vote of the remaining members present, he shall be counted as present for the purposes of determining whether a quorum is present. The board may compel the attendance of an absent member by ordering the sheriff to take the member into custody. (Code, s. 706; Rev., s. 1317; C. S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1.)

§ 153A-44. Members excused from voting. — The board may excuse a member from voting, but only upon questions involving his own financial interest or his official conduct. (For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct.) (Code, s. 706; Rev., s. 1317; C. S., s. 1296; 1945, c. 132; 1951, c. 904, s. 1; 1961, c. 154; 1967, c. 617, s. 1; 1969, c. 349, s. 1; c. 1036; 1973, c. 822, s. 1.)

§ 153A-45. Adoption of ordinances. — To be adopted at the meeting at which it is first introduced, an ordinance or any action having the effect of an ordinance (except the budget ordinance, any bond order, or any other ordinance on which a public hearing must be held before the ordinance may be adopted) must receive the approval of all the members of the board of commissioners. If the ordinance is approved by a majority of those voting but not by all the members of the board, or if the ordinance is not voted on at that meeting, it shall be considered at the next regular meeting of the board. If it then or at any time thereafter within 100 days of its introduction receives a majority of the votes cast, a quorum being present, the ordinance is adopted. (1963, c. 1060, ss. 1, 1½; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 822, s. 1.)

§ 153A-46. Franchises. — No ordinance making a grant, renewal, extension, or amendment of any franchise may be finally adopted until it has been passed at two regular meetings of the board of commissioners. No such grant, renewal, extension, or amendment may be made except by ordinance. (1973, c. 822, s. 1.)

§ 153A-47. Technical ordinances. — Subject to G.S. 143-138(e), a county may in an ordinance adopt by reference a published technical code or a standard or regulation promulgated by a public agency. A technical code or standard or regulation so adopted has the force of law in any area of the county in which the ordinance is applicable. An official copy of a technical code or standard or regulation adopted by reference shall be available for public inspection in the office of the clerk and need not be filed in the ordinance book. (1973, c. 822, s. 1.)

§ 153A-48. Ordinance book. — The clerk shall maintain an ordinance book, separate from the minute book of the board of commissioners. The ordinance book shall be indexed and shall be available for public inspection in the office of the clerk. Except as provided in this section and in G.S. 153A-47, each county ordinance shall be filed and indexed in the ordinance book.

The budget ordinance and any amendments thereto, any bond order, and any other ordinance of limited interest or transitory nature may be omitted from the ordinance book. However, the ordinance book shall contain a section showing the caption of each omitted ordinance and the page in the commissioners' minute book at which the ordinance may be found.

If a county adopts and issues a code of its ordinances, county ordinances need be recorded and indexed in the ordinance book only until they are placed in the codification. (1963, c. 1060, ss. 1, 1½; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 822, s. 1.)

§ 153A-49. Code of ordinances. — A county may adopt and issue a code of its ordinances. The code may be reproduced by any method that gives legible and permanent copies, and may be issued as a securely bound book or books with periodic separately bound supplements, or as a loose-leaf book maintained by replacement pages. Supplements or replacement pages should be adopted and issued at least annually, unless there have been no additions to or modifications of the code during the year.

A code may consist of two parts, the "General Ordinances" and the "Technical Ordinances." The technical ordinances may be published as separate books or pamphlets, and may include ordinances regarding the construction of buildings, the installation of plumbing and electric wiring, and the installation of cooling and heating equipment; ordinances regarding the use of public utilities, buildings, or facilities operated by the county; the zoning ordinance; the subdivision control ordinance; the privilege license tax ordinance; and other similar ordinances designated as technical ordinances by the board of commissioners. The board may omit from the code the budget ordinance, any bond orders, and other designated classes of ordinances of limited interest or transitory nature, but the code shall clearly describe the classes of ordinances omitted from it.

The board of commissioners may provide that ordinances (i) establishing or amending the boundaries of county zoning areas or (ii) establishing or amending the boundaries of zoning districts shall be codified by appropriate entries upon official map books to be retained permanently in the office of the clerk or some other county office generally accessible to the public. (1973, c. 822, s. 1.)

§ 153A-50. Pleading and proving county ordinances. — County ordinances shall be pleaded and proved under the rules and procedures of G.S. 160A-79. References to G.S. 160A-77 and G.S. 160A-78 appearing in G.S. 160A-79 are deemed, for purposes of this section, to refer to G.S. 153A-49 and G.S. 153A-48, respectively. (1973, c. 822, s. 1.)

§ 153A-51: Reserved for future codification purposes.

§ 153A-52. Conduct of public hearing. — The board of commissioners may hold public hearings at any place within the county. The board may adopt reasonable rules governing the conduct of public hearings, including but not limited to rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same position, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing.

The board may continue a public hearing without further advertisement. If a public hearing is set for a given date and a quorum of the board is not then present, the board shall continue the hearing without further advertisement until its next regular meeting. (1973, c. 822, s. 1.)

§§ 153A-53 to 153A-57: Reserved for future codification purposes.

Part 4. Modification in the Structure of the Board of Commissioners.

§ 153A-58. Optional structures. — A county may alter the structure of its board of commissioners by adopting one or any combination of the options prescribed by this section.

(1) Number of members of the board of commissioners: The board may consist of any number of members not less than three, except as limited by subdivision (2)d of this section.

(2) Terms of office of members of the board of commissioners:
  a. Members shall be elected for two-year terms of office.
  b. Members shall be elected for four-year terms of office.
  c. Members shall be elected for overlapping four-year terms of office.
  d. The board shall consist of an odd number of members, who are elected for a combination of four- and two-year terms of office, so that a majority of members is elected each two years. This option may be used only if all members of the board are nominated and elected by the voters of the entire county, and only if the chairman of the board is elected by and from the members of the board.

(3) Mode of election of the board of commissioners:
  a. The qualified voters of the entire county shall nominate all candidates for and elect all members of the board.

For options b, c, and d, the county shall be divided into electoral districts, and board members shall be apportioned to the districts so that the quotients obtained by dividing the population of each district by the number of commissioners apportioned to the district are as nearly equal as practicable.

b. The qualified voters of each district shall nominate candidates and elect members who reside in the district for seats apportioned to that district; and the qualified voters of the entire county shall nominate candidates and elect members apportioned to the county at large, if any.

c. The qualified voters of each district shall nominate candidates who reside in the district for seats apportioned to that district, and the qualified voters of the entire county shall nominate candidates for seats apportioned to the county at large, if any; and the qualified voters of the entire county shall elect all the members of the board.

d. Members shall reside in and represent the districts according to the apportionment plan adopted, but the qualified voters of the entire county shall nominate all candidates for and elect all members of the board.

If any of options b, c, or d is adopted, the board shall divide the county into the requisite number of electoral districts according to the apportionment plan adopted, and shall cause a delineation of the districts so laid out to be drawn up and filed as required by G.S. 153A-20. No more than half the board may be apportioned to the county at large.

(4) Selection of chairman of the board of commissioners:

a. The board shall elect a chairman from among its membership to serve a one-year term, as provided by G.S. 153A-39.

b. The chairmanship shall be a separate office. The qualified voters of the entire county nominate candidates for and elect the chairman for a two- or four-year term. (1927, c. 91, s. 3; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

§ 153A-59. Implementation when board has members serving a combination of four- and two-year terms. — If the structure of the board of commissioners is altered to establish a board with an odd number of members serving a combination of four- and two-year terms of office, the new structure shall be implemented as follows:

At the first election all members of the board shall be elected. A simple majority of those elected shall be elected for two-year terms, and the remaining members shall be elected for four-year terms. The candidate or candidates receiving the highest number of votes shall be elected for the four-year terms.

At each subsequent general election, a simple majority of the board shall be elected. That candidate who is elected with the least number of votes shall be elected for a two-year term, and the other member or members elected shall be elected for four-year terms. (1927, c. 91, s. 3; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

§ 153A-60. Initiation of alterations by resolution. — The board of commissioners shall initiate any alteration in the structure of the board by adopting a resolution. The resolution shall:

(1) Briefly but completely describe the proposed alterations;

(2) Prescribe the manner of transition from the existing structure to the altered structure;

(3) Define the electoral districts, if any, and apportion the members among the districts;

(4) Call a special referendum on the question of adoption of the alterations. The referendum shall be held and conducted by the county board of elections. The referendum may be held at the same time as any other state, county or municipal primary, election, special election or referendum, or on any date set by the board of county commissioners, provided, that such referendum shall not be held within the period of time beginning 60 days before and ending 60 days after any other primary, election, special election or referendum held in the county.

Upon its adoption, the resolution shall be published in full. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1; 1977, c. 382.)

Editor's Note. — The 1977 amendment rewrote subdivision (4).

§ 153A-61. Submission of proposition to voters; form of ballot. — A proposition to approve an alteration shall be printed on the ballot in substantially the following form:

"Shall the structure of the board of commissioners be altered? (Describe the effect of the alteration.)

☐ YES
☐ NO"

The ballot shall be separate from other ballots used at the election.

If a majority of the votes cast on the proposition are in the affirmative, the plan contained in the resolution shall be put into effect as provided in this Part. If a majority of the votes cast are in the negative, the resolution and the plan contained therein are void. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

§ 153A-62. Effective date of any alteration. — Any approved alteration shall be the basis for nominating and electing the members of the board of commissioners at the first succeeding primary and general election for county offices held after approval of the alteration; and the alteration takes effect on the first Monday in December following that general election. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

§ 153A-63. Filing copy of resolution. — A copy of a resolution approved pursuant to this Part shall be filed and indexed in the ordinance book required by G.S. 153A-48. (1927, c. 91, s. 4; 1969, c. 717, s. 1; 1973, c. 822, s. 1.)

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting "G.S. 153A-48" for "G.S. 153A-47" at the end of the section.

§§ 153A-64 to 153A-75: Reserved for future codification purposes.

ARTICLE 5.

Administration.

Part 1. Organization and Reorganization of County Government.

§ 153A-76. Board of commissioners to organize county government. — The board of commissioners may create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the county government, may impose ex officio the duties of more than one office on a single officer, may change the composition and manner of selection of boards, commissions, and agencies, and may generally organize and reorganize the county government in order to promote orderly and efficient administration of county affairs, subject to the following limitations:

(1) The board may not abolish an office, position, department, board, commission, or agency established or required by law.

(2) The board may not combine offices or confer certain duties on the same officer when this action is specifically forbidden by law.

(3) The board may not discontinue or assign elsewhere a function or duty assigned by law to a particular office, position, department, board, commission, or agency.

(4) The board may not change the composition or manner of selection of a local board of education, the board of health, the board of social services, the board of elections, or the board of alcoholic beverage control. (1973, c. 822, s. 1.)

§ 153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc. — In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners is hereby authorized to assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This section shall apply to the board of health, the social services board, board of mental health (area) and any other commission, board or agency appointed by the board of county commissioners and/or acting under and pursuant to authority of the board of county commissioners of said county. It is provided, however, that the board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners is further authorized and empowered, in the exercise of its discretion, to appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county.

This section applies to counties with a population in excess of 325,000. (1973, c. 454, ss. 1-2½.)

§§ 153A-78 to 153A-80: Reserved for future codification purposes.

Part 2. Administration in Counties Having Managers.

§ 153A-81. Adoption of county-manager plan; appointment or designation of manager. — The board of commissioners may by resolution adopt or discontinue the county-manager plan. If it adopts the county-manager plan, the board may, in the alternative:

(1) Appoint a county manager to serve at its pleasure. The manager shall be appointed solely on the basis of his executive and administrative qualifications. He need not be a resident of the county or the State at the time of his appointment.

(2) Confer upon the chairman or some other member of the board of commissioners the duties of county manager. If this is done, the chairman or member shall become a full-time county official, and the board may increase his salary pursuant to G.S. 153A-28.

(3) Confer upon any other officer, employee, or agent of the county the duties of county manager.

As used in this Part, the word "manager" includes the chairman or any member of the board of commissioners exercising the duties of manager or any officer, employee, or agent of a county exercising the duties of manager. (1927, c. 91, ss. 5, 8; 1973, c. 822, s. 1.)

§ 153A-82. Powers and duties of manager. — The manager is the chief administrator of county government. He is responsible to the board of commissioners for the administration of all departments of county government under the board's general control and has the following powers and duties:

(1) He shall appoint with the approval of the board of commissioners and suspend or remove all county officers, employees, and agents except those who are elected by the people or whose appointment is otherwise provided for by law. The board may by resolution permit the manager to appoint officers, employees, and agents without first securing the board's approval. The manager shall make his appointments, suspensions, and removals in accordance with any general personnel rules, regulations, policies, or ordinances that the board may adopt. The board may require the manager to report each suspension or removal to the board at the board's first regular meeting following the suspension or removal; and, if the board has permitted the manager to make appointments without board approval, the board may require the manager to report each appointment to the board at the board's first regular meeting following the appointment.

(2) He shall direct and supervise the administration of all county offices, departments, boards, commissions and agencies under the general control of the board of commissioners, subject to the general direction and control of the board.

(3) He shall attend all meetings of the board of commissioners and recommend any measures that he considers expedient.

(4) He shall see that the orders, ordinances, resolutions, and regulations of the board of commissioners are faithfully executed within the county.

(5) He shall prepare and submit the annual budget and capital program to the board of commissioners.

(6) He shall annually submit to the board of commissioners and make available to the public a complete report on the finances and administrative activities of the county as of the end of the fiscal year.

(7) He shall make any other reports that the board of commissioners may require concerning the operations of county offices, departments, boards, commissions, and agencies.

(8) He shall perform any other duties that may be required or authorized by the board of commissioners. (1927, c. 91, ss. 6, 7; 1973, c. 822, s. 1.)

§ 153A-83. Acting county manager. — By letter filed with the clerk, the manager may designate, subject to the approval of the board of commissioners, a qualified person to exercise the powers and perform the duties of manager during the manager's temporary absence or disability. During an absence or disability, the board may revoke the designation at any time and appoint another person to serve until the manager returns or his disability ceases. (1973, c. 822, s. 1.)

§ 153A-84. Interim county manager. — Whenever the position of county manager is vacant, the board of commissioners shall designate a qualified person to exercise the powers and perform the duties of manager until the vacancy is filled. The board may designate the chairman or some other member as interim manager; for the interim the chairman or member shall become a full-time county official, and the board may increase his salary pursuant to G.S. 153A-28. (1973, c. 822, s. 1.)

§§ 153A-85, 153A-86: Reserved for future codification purposes.

Part 3. Administration in Counties Not Having Managers.

§ 153A-87. Administration in counties not having managers. — In a county that has not adopted or does not operate under the county-manager plan, the board of commissioners shall appoint, suspend, and remove all county officers, employees, and agents except those who are elected by the people or whose appointment is otherwise provided for by law. The board may delegate to the head of any county department the power to appoint, suspend, and remove county officers or employees assigned to his department. (1973, c. 822, s. 1.)

§ 153A-88. Acting department heads. — By letter filed with the clerk, the head of a department may designate, subject to the approval of the board of commissioners, a qualified person to exercise the powers and perform the duties of head of that department during the department head's temporary absence or disability. During an absence or disability, the board may revoke the designation at any time and appoint another person to serve until the department head returns or his disability ceases. (1973, c. 822, s. 1.)

§ 153A-89. Interim department heads. — Whenever the position of head of a department is vacant, the board may designate a qualified person to exercise the powers and perform the duties of head of the department until the vacancy is filled. (1973, c. 822, s. 1.)

§§ 153A-90, 153A-91: Reserved for future codification purposes.

Part 4. Personnel.

§ 153A-92. Compensation. — (a) Subject to the limitations set forth in subsection (b) of this section, the board of commissioners shall fix or approve the schedule of pay, expense allowances, and other compensation of all county officers and employees, whether elected or appointed, and may adopt position classification plans.

(b) In exercising the authority granted by subsection (a) of this section, the board of commissioners is subject to the following limitations:

(1) The board of commissioners may not reduce the salary, allowances, or other compensation paid to an officer elected by the people for the duties of his elective office if the reduction is to take effect during the term of office for which the incumbent officer has been elected, unless the officer agrees to the reduction or unless the Local Government Commission pursuant to Chapter 159, Article 10, orders a reduction.

(2) During the year of a general election, the board of commissioners may reduce the salary, allowances, or other compensation of an officer to be elected at the general election only in accordance with this subdivision. The board of commissioners shall by resolution give notice of intention to make the reduction no later than 14 days before the last day for filing notice of candidacy for the office. The resolution shall set forth the reduced salary, allowances, and other compensation and shall provide that the reduction is to take effect at the time the person elected to the office in the general election takes office. Once adopted, the resolution may not be altered until the person elected to the office in the general election has taken office. The filing fee for the office shall be determined by reference to the reduced salary.

(3) If the board of commissioners reduces the salaries, allowances, or other compensation of employees assigned to an officer elected by the people, and the reduction does not apply alike to all county offices and departments, the elected officer involved must approve the reduction. If the elected officer refuses to approve the reduction, he and the board

of commissioners shall meet and attempt to reach agreement. If agreement cannot be reached, either the board or the officer may refer the dispute to arbitration by the senior regular resident superior court judge of the judicial district in which the county is located. The judge shall make an award within 30 days after the day the matter is referred to him. The award may extend for no more than two fiscal years, including the fiscal year for which it is made.

(4) The board of commissioners shall fix their own salaries, allowances, and other compensation in accordance with G.S. 153A-28.

(5) The board of commissioners shall fix the salaries, allowances and other compensation of county employees subject to the State Personnel Act according to the procedures set forth in Chapter 126. The board may make these employees subject to a county position classification plan only as provided in Chapter 126.

(c) In counties with a county manager, the manager is responsible for preparing position classification and pay plans for submission to the board of commissioners and for administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the board. In counties without a county manager, the board of commissioners shall appoint or designate a personnel officer, who shall then be responsible for administering the pay plan and any position classification plan in accordance with general policies and directives adopted by the board.

(d) A county may purchase life insurance or health insurance or both for the benefit of all or any class of county officers and employees as a part of their compensation. A county may provide other fringe benefits for county officers and employees. (1927, c. 91, s. 8; 1953, c. 1227, ss. 1-3; 1969, c. 358, s. 1; c. 1017; 1973, c. 822, s. 1.)

When Local or Special Act Applicable in Fixing Salaries. — See opinion of Attorney General to Mr. James R. Sugg, Craven County Attorney, 41 N.C.A.G. 22A (1970).

County Board of Commissioners Has No Authority to Abolish Office or Reduce Salary of Incumbent Coroner during Term of Office. —See opinion of Attorney General to Mr. Harold Price, Chairman, Alexander County Board of Elections, 40 N.C.A.G. 568 (1970).

Authority of County to Increase Officers' Salaries in Election Year. — See opinion of Attorney General to Mr. Dallas W. McPherson, Greene County Attorney, 40 N.C.A.G. 569 (1970).

§ 153A-93. Retirement benefits. — (a) The board of commissioners may provide for enrolling county officers and employees in the Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Benefit and Relief Fund, the Firemen's Pension Fund, or a retirement plan certified to be actuarially sound by a qualified actuary as defined in subsection (c) of this section and may make payments into such a retirement system or plan on behalf of its employees.

(b) No county may make payments into a retirement system or plan established or authorized by a local act unless the system or plan is certified to be actuarially sound by a qualified actuary as defined in subsection (c) of this section.

(c) A qualified actuary means a member of the American Academy of Actuaries or an individual certified as qualified by the Commissioner of Insurance. (1973, c. 822, s. 1.)

§ 153A-94. Personnel rules; office hours, workdays, and holidays. — (a) The board of commissioners may adopt or provide for rules and regulations or ordinances concerning but not limited to annual leave, sick leave, special leave with full pay or with partial pay supplementing workmen's compensation payments for employees injured in accidents arising out of and in the course of employment, working conditions, service award and incentive award programs, other personnel policies, and any other measures that promote the hiring and retention of capable, diligent, and honest career employees.

(b) The board of commissioners may prescribe the office hours, workdays, and holidays to be observed by the various offices, departments, boards, commissions, and agencies of the county. (1959, c. 251; 1973, c. 822, s. 1.)

§ 153A-95. Personnel board. — The board of commissioners may establish a personnel board with authority, as regards employees in offices, departments, boards, commissions, and agencies under the general control of the board of commissioners, to administer tests designed to determine the merit and fitness of candidates for appointment or promotion, to conduct hearings upon the appeal of employees who have been suspended, demoted, or discharged, to hear employee grievances, or to undertake any other duties relating to personnel administration that the board of commissioners may direct. (1973, c. 822, s. 1.)

§ 153A-96. Participation in the Social Security Act. — The board of commissioners may take any action necessary to allow county officers and employees to participate fully in benefits provided by the Federal Social Security Act. (1973, c. 822, s. 1.)

§ 153A-97. Defense of officers, employees and others. — A county may, pursuant to G.S. 160A-167, provide for the defense of any county officer or employee, including the county board of elections or any county election official, and of any member of a volunteer fire department or rescue squad which receives public funds. (1957, c. 436; 1973, c. 822, s. 1; 1977, c. 307, s. 1.)

Editor's Note. — The 1977 amendment added "and of any member of a volunteer fire department or rescue squad which receives public funds" at the end of the section.

§ 153A-98. Privacy of employee personnel records. — (a) Notwithstanding the provisions of G.S. 132-6 or any other general law or local act concerning access to public records, personnel files maintained by a county are subject to inspection and may be disclosed only as provided by this section.

(b) The following information with respect to each county employee is a matter of public record: name; age; date of original employment or appointment to the county service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation or other change in position classification; and the office to which the employee is currently assigned. The board of county commissioners shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the board of commissioners may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue such orders.

(c) All information contained in a county employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his duly authorized agent may examine all portions of his personnel file except (i) letters of reference solicited prior to employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A county employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.

(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of such records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability.

(d) The board of commissioners of a county that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in his file on grounds that is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(e) Any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized by this section, is guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars ($500.00).

(f) Any person, not specifically authorized by this section to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars ($500.00). (1975, c. 701, s. 1.)

§§ 153A-99, 153A-100: Reserved for future codification purposes.

Part 5. Board of Commissioners and Other Officers, Boards, Departments, and Agencies of the County.

§ 153A-101. Board of commissioners to direct fiscal policy of the county. —The board of commissioners has and shall exercise the responsibility of developing and directing the fiscal policy of the county government under the provisions and procedures of the Local Government Budget and Fiscal Control Act. (1777, c. 129, s. 4, P. R.; R. C., c. 28, s. 16; Code, s. 753; Rev., s. 1379; C. S., s. 1325; 1927, c. 91, s. 11; 1953, c. 973, s. 2; 1973, c. 822, s. 1.)

Power to Create Necessary Debts. — The legislature may confer upon a county the power to create debts for necessary expenses, without the approval of "a majority of the qualified voters" in the county. Evans v. Commissioners of Cumberland, 89 N.C. 154 (1883).

Necessary Expenses Determined by Commissioners. — What is "necessary expense" for a county is to be determined by the sound judgment and discretion of its board of commissioners. Broadnax v. Groom, 64 N.C. 244 (1870); Commissioners of Yancey County v. Road Comm'rs, 165 N.C. 632, 81 S.E. 1001 (1914); Hargrave v. Board of Comm'rs, 168 N.C. 626, 84 S.E. 1044 (1915); Wilson v. Holding, 170 N.C. 352, 86 S.E. 1043 (1915).

As to province of the courts and the legislature, see Burgin v. Smith, 151 N.C. 561, 66 S.E. 607 (1909), citing Cromartie v. Commissioners of Bladen, 87 N.C. 134 (1882); Hightower v. City of Raleigh, 150 N.C. 569, 65 S.E. 279 (1909).

When Commissioners' Actions Not Subject to Review. — The commissioners' exercise of their discretion will not be reviewed except when mala fides is shown. Jackson v. Board of Comm'rs, 171 N.C. 379, 88 S.E. 521 (1916).

When Public and Private Interests Conflict. — Upon the principle that where public interests conflict with private interests, if the entire fund which can be raised by taxation is required to meet the necessary expenses of an economical administration of the county government, and none can be diverted to pay its indebtedness without serious detriment to the public, none ought to be thus appropriated. Cromartie v. Commissioners of Bladen, 85 N.C. 211 (1881).

County May Hire Auditors. — The commissioners of a county have the right to contract with skilled expert accountants for auditing of the books and accounts of the various departments of the county at a price agreed upon, and empowers them to order that the same be paid by the county treasurer out of the county funds. Wilson v. Holding, 170 N.C. 352, 86 S.E. 1043 (1915).

Support of Convicts. — The support of the county convicts must be paid out of the general county fund. Chambers v. Walker, 120 N.C. 401, 27 S.E. 77 (1897).

Legislature to Determine Care of Indigent. —It is the exclusive right of the legislature to determine how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board of Educ. v. Commissioners of Bladen, 113 N.C. 379, 18 S.E. 661 (1893).

§ 153A-102. Commissioners to fix fees. — The board of commissioners may fix the fees and commissions charged by county officers and employees for performing services or duties permitted or required by law. The board may not, however, fix fees in the General Court of Justice or modify the fees of the register of deeds prescribed by G.S. 161-10 or the fees of the board of elections prescribed by G.S. 163-107. (1953, c. 1227, ss. 1-3; 1969, c. 358, s. 1; c. 1017; 1973, c. 822, s. 1.)

§ 153A-103. Number of employees in offices of sheriff and register of deeds. — Subject to the limitations set forth below, the board of commissioners may fix the number of salaried employees in the offices of the sheriff and the register of deeds. In exercising the authority granted by this section, the board of commissioners is subject to the following limitations:

(1) Each sheriff and register of deeds elected by the people has the exclusive right to hire, discharge, and supervise the employees in his office. However, the board of commissioners must approve the appointment by such an officer of a relative by blood or marriage of nearer kinship than first cousin or of a person who has been convicted of a crime involving moral turpitude.

(2) Each sheriff and register of deeds elected by the people is entitled to at least one deputy, who shall be reasonably compensated by the county.

Notwithstanding the foregoing provisions of this section, approval of the board of commissioners is not required for the reappointment or continued employment of a near relative of a sheriff or register of deeds who was not related to the appointing officer at the time of initial appointment. (1953, c. 1227, ss. 1, 2; 1969, c. 358, s. 1; 1973, c. 822, s. 1; 1977, c. 36.)

Editor's Note. — The 1977 amendment added the last paragraph.

Cited in Cline v. Brown, 24 N.C. App. 209, 210 S.E.2d 446 (1974).

§ 153A-104. Reports from officers, employees, and agents of the county. —The board of commissioners may require any officer, employee, or agent of the county to make to the board, either directly or through the county manager, periodic or special reports concerning any matter connected with the officer's, employee's or agent's duties. The board may require that such a report be made under oath. If a person fails or refuses to obey a reasonable order to make a report, issued pursuant to this section, the board may apply to the appropriate division of the General Court of Justice for an order requiring that its order be obeyed. The court has jurisdiction to issue these orders. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1973, c. 822, s. 1.)

§§ 153A-105 to 153A-110: Reserved for future codification purposes.

Part 6. Clerk to the Board of Commissioners.

§ 153A-111. Appointment; powers and duties. — The board of commissioners shall appoint or designate a clerk to the board. The board may designate the register of deeds or any other county officer or employee as clerk. The clerk shall perform any duties that may be required by law or the board of commissioners. The clerk shall serve as such at the pleasure of the board. (Const., art. 7, s. 2; Code, s. 710; 1895, c. 135, s. 4; Rev., s. 1324; C. S., s. 1309; 1955, c. 247, s. 1; 1963, c. 372; 1969, c. 207; 1973, c. 822, s. 1.)

§§ 153A-112, 153A-113: Reserved for future codification purposes.

Part 7. County Attorney.

§ 153A-114. Appointment; duties. — The board of commissioners shall appoint a county attorney to serve at its pleasure and to be its legal adviser. (1973, c. 822, s. 1.)

§§ 153A-115 to 153A-120: Reserved for future codification purposes.

ARTICLE 6.

Delegation and Exercise of the General Police Power.

§ 153A-121. General ordinance-making power. — (a) A county may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.

(b) This section does not authorize a county to regulate or control vehicular or pedestrian traffic on a street or highway under the control of the Board of Transportation, nor to regulate or control any right-of-way or right-of-passage belonging to a public utility, electric or telephone membership corporation, or public agency of the State. In addition, no county ordinance may regulate or control a highway right-of-way in a manner inconsistent with State law or an ordinance of the Board of Transportation.

(c) This section does not impair the authority of local boards of health to adopt rules and regulations to protect and promote public health. (1963, c. 1060, ss. 1, 1½; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 507, s. 5; c. 822, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 507, s. 5, "Board of Transportation" has been substituted for "State Highway Commission."

For an article on local legislation in the General Assembly, discussing former § 153-9(55), see 45 N.C.L. Rev. 340 (1967).

Home Rule Statute. — Former § 153-9(55), authorizing boards of county commissioners to adopt ordinances for the better government of the county, was a Home Rule statute, applicable throughout the State. It enabled the county commissioners of every county to enact ordinances in the exercise of the general police power within the prescribed territory just as other statutes enable the governing bodies of cities and towns to enact ordinances in the exercise of the general police powers within their corporate limits. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Does Not Contravene Constitutional Limitations on Local, Private and Special Legislation. — Former § 153-9(55) was a general law and therefore did not contravene N.C. Const.

1868, Art. II, § 29. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970). See N.C. Const., Art. II, § 24.

Former § 153-9(55) did not confer or withhold authority in respect of specific activities; on the contrary, it conferred authority to enact ordinances in the exercise of the general police power. In this respect, the statute was similar to the statutes which confer general police power upon cities and towns. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970); State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

The authority conferred by former § 153-9(55) upon the boards of commissioners of the respective counties was the same as that conferred upon cities and towns by §§ 160A-174 and 160A-181. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

Legislative Authority of County Board of Commissioners. — A county board of commissioners has no legislative authority not granted to it expressly or by necessary implication from expressly granted powers. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

Power of General Assembly to Delegate Authority to County Boards. — Subject to constitutional limitations, the power of the General Assembly to delegate to county commissioners the authority to adopt ordinances in the lawful exercise of the police power is well established. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Courts Are Not Concerned with Motives, Wisdom or Expediency of Board's Acts. — If the board of commissioners does not exceed its delegated or constitutional authority, the courts are not concerned with the motives, wisdom, or expediency which prompts its actions. Whitney Stores, Inc. v. Clark, 277 N.C. 322, 177 S.E.2d 418 (1970).

Ordinance May Not Forbid Conduct Dealt with by Statute. — The board of commissioners of a county cannot enact a valid ordinance forbidding certain conduct if a statewide statute in effect at the time the ordinance in question is adopted deals specifically with the identical conduct. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

And Repeal of Statute Does Not Breathe Life into Ordinance. — The repeal of a statewide law which, during its life, prohibited the enactment of a county ordinance is prospective and does not breathe life into an ordinance which was beyond the authority of the ordaining body when it was adopted. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

County May Proscribe Obscenity Not Forbidden by State Law. — Nothing in §§ 14-190.1 through 14-190.9, statewide laws relating to obscene literature and exhibitions and to indecent exposure, expresses or indicates an intent by the General Assembly to preclude cities and towns or counties from enacting and enforcing ordinances requiring a higher standard of conduct or condition within their respective jurisdictions. State v. Tenore, 280 N.C. 238, 185 S.E.2d 644 (1972).

Authority for County Ordinance Concerning Drive-In Theaters. — Former § 153-9(55) provided plenary authority for a county ordinance making it unlawful to operate a drive-in motion picture theater near streets or highways in such a manner that the screen is visible to passing motorists. Variety Theaters, Inc. v. Cleveland County, 282 N.C. 272, 192 S.E.2d 290 (1972).

As to constitutionality of county ordinance concerning drive-in theaters, see Variety Theaters, Inc. v. Cleveland County, 282 N.C. 272, 192 S.E.2d 290 (1972).

Sunday Closing Ordinances. — Former § 153-9(55) conferred authority to enact Sunday closing ordinances upon the boards of commissioners of the respective counties. State v. Atlas, 283 N.C. 165, 195 S.E.2d 496 (1973).

As to constitutionality of Sunday closing ordinance, see State v. Atlas, 283 N.C. 165, 195 S.E.2d 496 (1973).

§ 153A-122. Territorial jurisdiction of county ordinances. — Except as otherwise provided in this Article, the board of commissioners may make any ordinance adopted pursuant to this Article applicable to any part of the county not within a city. In addition, the governing board of a city may by resolution permit a county ordinance adopted pursuant to this Article to be applicable within the city. The city may by resolution withdraw its permission to such an ordinance. If it does so, the city shall give written notice to the county of its withdrawal of permission; 30 days after the day the county receives this notice the county ordinance ceases to be applicable within the city. (1963, c. 1060, ss. 1, 1½; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 822, s. 1.)

A City Is Not Required to Approve by Resolution County Parking Ordinances Pertaining to County Property Located within the City. — See opinion of Attorney General to Mr. F.L. Carr, 43 N.C.A.G. 409 (1974).

§ 153A-123. Enforcement of ordinances. — (a) A county may provide for fines and penalties for violation of its ordinances and may secure injunctions and abatement orders to further insure compliance with its ordinances, as provided by this section.

(b) Unless the board of commissioners has provided otherwise, violation of a county ordinance is a misdemeanor as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine or term of imprisonment to be imposed for its violation is some amount of money or number of days less than the maximum fine or term prescribed by G.S. 14-4.

(c) An ordinance may provide that violation subjects the offender to a civil penalty to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such a case, the General Court of Justice has jurisdiction to issue any order that may be appropriate, and it is not a defense to the county's application for equitable relief that there is an adequate remedy at law.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may provide that it may be enforced by injunction and order of abatement, and the General Court of Justice has jurisdiction to issue such an order. When a violation of such an ordinance occurs, the county may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt and the county may execute the order of abatement. If the county executes the order, it has a lien on the property, in the nature of a mechanic's and materialman's lien, for the costs of executing the order. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter was heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

(f) Subject to the express terms of the ordinance, a county ordinance may be enforced by any one or more of the remedies authorized by this section.

(g) A county ordinance may provide, when appropriate, that each day's continuing violation is a separate and distinct offense. (1973, c. 822, s. 1.)

Editor's Note. — The Rules of Civil Procedure are found in § 1A-1.

§ 153A-124. Enumeration not exclusive. — The enumeration in this Article or other portions of this Chapter of specific powers to define, regulate, prohibit, or abate acts, omissions, or conditions is not exclusive, nor is it a limit on the general authority to adopt ordinances conferred on counties by G.S. 153A-121. (1973, c. 822, s. 1.)

§ 153A-125. Regulation of solicitation campaigns and itinerant merchants. — A county may by ordinance regulate, restrict, or prohibit the solicitation of contributions from the public for charitable or eleemosynary purposes, and also the business activities of itinerant merchants, salesmen, promoters, drummers, peddlers, and hawkers. These ordinances may include, but are not limited to, requirements that an application be made and a permit issued, that an investigation be made, that activities be reasonably limited as to time and place, that proper credentials and proof of financial stability be submitted, that not more than a stated percentage of contributions to solicitation campaigns be retained for administrative expenses, and that an adequate bond be posted to protect the public from fraud. A county may charge a fee for a permit issued pursuant to such an ordinance. (1967, c. 80, ss. 1-2$^1/_2$; 1973, c. 822, s. 1.)

§ 153A-126. Regulation of begging. — A county may by ordinance prohibit or regulate begging or otherwise canvassing the public for contributions for the private benefit of the solicitor or any other person. (1973, c. 822, s. 1.)

§ 153A-127. Abuse of animals. — A county may by ordinance define and prohibit the abuse of animals. (1973, c. 822, s. 1.)

§ 153A-128. Regulation of explosive, corrosive, inflammable, or radioactive substances. — A county may by ordinance regulate, restrict, or prohibit the sale, possession, storage, use or conveyance of any explosive, corrosive, inflammable, or radioactive substance or of any weapon or instrumentality of mass death and destruction. (1973, c. 822, s. 1.)

§ 153A-129. Firearms. — A county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter III, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public property. This section does not limit a county's authority to take action under Chapter 14, Article 36A. (1973, c. 822, s. 1.)

Local Modification. — Bertie: 1975, c. 289.

§ 153A-130. Pellet guns. — A county may by ordinance regulate, restrict, or prohibit the sale, possession, or use of pellet guns or any other mechanism or device designed or used to project a missile by compressed air or mechanical action with less than deadly force. (1973, c. 822, s. 1.)

§ 153A-131. Possession or harboring of dangerous animals. — A county may by ordinance regulate, restrict, or prohibit the possession or harboring of animals which are dangerous to persons or property. No such ordinance shall have the effect of permitting any activity or condition with respect to a wild animal which is prohibited or more severely restricted by regulations of the Wildlife Resources Commission. (1973, c. 822, s. 1; 1977, c. 407, s. 1.)

Cross Reference. — As to the power of cities to regulate, restrict or prohibit the possession or harboring of dangerous animals, see § 160A-187.

Editor's Note. — The 1977 amendment substituted "animals which are" for "wild animals" in the first sentence, deleted "or offensive to the senses" from the end of the first sentence, and added the second sentence.

§ 153A-132. Removal and disposal of abandoned and junked motor vehicles. — (a) Grant of Power. — A county may by ordinance prohibit the abandonment of motor vehicles on public grounds and private property within the county's ordinance-making jurisdiction and on county-owned property wherever located. The county may enforce the ordinance by removing and disposing of abandoned or junked motor vehicles according to the procedures prescribed in this section.

(b) Definitions. — "Motor vehicle" includes any machine designed or intended to travel over land or water by self-propulsion or while attached to self-propelled vehicle.

An "abandoned motor vehicle" is one that:

(1) Is left on public grounds or county-owned property in violation of a law or ordinance prohibiting parking; or
(2) Is left for longer than 24 hours on property owned or operated by the county; or
(3) Is left for longer than two hours on private property without the consent of the owner, occupant, or lessee of the property; or
(4) Is left for longer than seven days on public grounds.

A "junked motor vehicle" is an abandoned motor vehicle that also:

(1) Is partially dismantled or wrecked; or
(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
(3) Is more than five years old and appears to be worth less than one hundred dollars ($100.00); or
(4) Does not display a current license plate.

(c) Removal of Vehicles. — A county may remove to a storage garage or area an abandoned or junked motor vehicle found to be in violation of an ordinance adopted pursuant to this section. A vehicle may not be removed from private property, however, without the written request of the owner, lessee, or occupant of the premises unless the board of commissioners or a duly authorized county official or employee has declared the vehicle to be a health or safety hazard. Appropriate county officers and employees have a right, upon presentation of proper credentials, to enter on any premises within the county ordinance-making jurisdiction at any reasonable hour in order to determine if any vehicles are health or safety hazards. The county may require a person requesting the removal from private property of an abandoned or junked motor vehicle to indemnify the county against any loss, expense, or liability incurred because of the vehicle's removal, storage, or sale.

When abandoned or junked motor vehicle is removed, the county shall promptly give written notice of the removal to the registered owner at his last known address according to the latest registration certificate or certificate of title on file with the Division of Motor Vehicles. The notice shall inform the owner of the possible sale or other disposition that may be made of the vehicle under this section. The owner may regain possession of the vehicle by paying to the county all reasonable costs incidental to the removal and storage. If the vehicle does not display a current license plate and the vehicle identification numbers have been removed or defaced so as to be illegible, the county need not give notice to the vehicle's registered owner.

(d) Disposal of Abandoned Motor Vehicles. — After holding an abandoned motor vehicle for 30 days after the day the vehicle is removed, the county may sell or dispose of it as provided in this subsection.

If the vehicle appears to be worth less than one hundred dollars ($100.00), the county may dispose of the vehicle as a junked motor vehicle as provided by subsection (e) of this section. With the consent of the owner, the county may remove and dispose of a motor vehicle as a junked motor vehicle without regard to the value, condition, or age of the vehicle and without holding it for any prescribed period of time.

If the vehicle appears to be worth one hundred dollars ($100.00) or more, it shall be sold at public auction. The county shall give 20 days' written notice of the sale to the registered owner at his last known address, to each holder of a lien of record against the vehicle, and to the Division of Motor Vehicles. Any person having an interest in the vehicle may redeem it at any time before the sale by paying all costs accrued to date. The proceeds of the sale shall be paid to the county finance officer, who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale, and liens, in that order. The remainder of the proceeds of sale, if any, shall be paid over to the registered owner, or held by the county for 60 days if the registered owner cannot be located with reasonable diligence. If the owner does not claim the remainder of the proceeds within 60 days after the day of the sale, the funds shall be deposited in the county's general fund and the owner's rights in the vehicle are extinguished. When it receives a county's bill of sale from a purchaser or other person entitled to receive a vehicle disposed of as provided in this subsection, the Division of Motor Vehicles shall issue a certificate of title for the vehicle as required by law.

(e) Disposal of Junked Motor Vehicles. — After holding a junked motor vehicle for 15 days, the county may destroy it or sell it at private sale as junk. Within 15 days after final disposition of a junked motor vehicle, the county shall notify the Division of Motor Vehicles that the vehicle has been determined to be a junked motor vehicle and has been disposed of as such. The notice shall contain as full and accurate a description of the vehicle as can be reasonably determined. The proceeds of the sale of a junked motor vehicle shall be paid to the county finance officer, who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale, and liens, in that order. The remainder of the proceeds of sale, if any, shall be held by the county for 30 days and paid to the registered owner upon demand. If the owner does not claim the remainder of the proceeds within 30 days after the day the vehicle is disposed of, the funds shall be deposited in the county's general fund, and the owner's rights in the vehicle are extinguished.

(f) Disposal of Vehicles without Plates or Identification Numbers. — If a junked motor vehicle does not display a current license plate and the vehicle identification numbers have been removed or defaced so as to be illegible, a county may dispose of it under this subsection rather than subsection (d) or (e). The county may destroy the vehicle or sell it at private sale (without regard to value), after having held the vehicle for 48 hours. The proceeds shall be placed in the county's general fund.

(g) No Liability. — No person nor any county may be held to answer in a civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, junked, lost, or stolen motor vehicle for disposing of the vehicle as provided in this section.

(h) Exceptions. — This section does not apply to any vehicle in an enclosed building, to any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the county. (1971, c. 489; 1973, c. 822, s. 1; 1975, c. 716, s. 5.)

§ 153A-132.1. To provide for the removal and disposal of trash, garbage, etc. — The board of county commissioners of any county is hereby authorized to enact ordinances governing the removal, method or manner of disposal, depositing or dumping of any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever within the rural areas of the county and outside and beyond the corporate limits of any municipality of said county. An ordinance adopted pursuant hereto may make it unlawful to place, discard, dispose, leave or dump any trash, debris, garbage, litter, discarded cans or receptacles or any waste matter whatsoever upon a street or highway located within that county or upon property owned or operated by the county unless such trash, debris, garbage, litter, discarded cans or receptacles or any waste matter is placed in a designated location or container for removal by a specific garbage or trash service collector.

Boards of county commissioners may also provide by ordinance enacted pursuant to this section, that the placing, discarding, disposing, leaving or dumping of the articles forbidden by this section shall, for each day or portion thereof the articles or matter are left, constitute a separate offense, and that a person in violation of the ordinance may be punished by a fine not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days, or both, for each offense. (1973, c. 952.)

§ 153A-133. Noise regulation. — A county may by ordinance regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens. (1973, c. 822, s. 1.)

§ 153A-134. Regulating and licensing businesses, trades, etc. — A county may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the county may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor. This section does not authorize a county to examine or license a person holding a license issued by an occupational licensing board of this State as to the profession or trade that he has been licensed to practice or pursue by the State.

This section does not impair the county's power to levy privilege license taxes on occupations, businesses, trades, professions, and other activities pursuant to G.S. 153A-152. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1973, c. 822, s. 1.)

License to Retail Spirituous and Other Liquors. — See generally Chapter 18A of the General Statutes relating to intoxicating liquors. For cases decided prior to the enactment of the statutes comprising that chapter and former Chapter 18, see W.O. Muller & Co. v. Commissioners of Buncombe County, 89 N.C. 171 (1883); State v. Voight, 90 N.C. 741 (1884); Jones v. Commissioners of Moore County, 106 N.C. 436, 11 S.E. 514 (1890); Board of Comm'rs v. Smith, 110 N.C. 417, 14 S.E. 972 (1892).

§ 153A-135. Regulation of places of amusement. — A county may by ordinance regulate places of amusement and entertainment, and may regulate, restrict, or prohibit the operation of pool and billiard halls, dance halls, carnivals, circuses, or itinerant shows or exhibitions of any kind. Places of amusement and entertainment include coffee houses, cocktail lounges, night clubs, beer halls, and similar establishments, but any regulation of such places shall be consistent with any permit or license issued by the State Board of Alcoholic Control. (1963, c. 1060, ss. 1, 1½; 1965, cc. 388, 567, 1083, 1158; 1967, c. 495, s. 2; 1969, c. 36, s. 1; 1971, c. 702, ss. 1-3; 1973, c. 822, s. 1.)

§ 153A-136. Regulation of solid wastes. — (a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding seven years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any regulations adopted by the Department of Human Resources. (1955, c. 1050; 1957, cc. 120, 376; 1961, c. 40; c. 514, s. 1; cc. 711, 803; c. 806, s. 1; 1965, c. 452; 1967, cc. 34, 90; c. 183, s. 1; cc. 304, 339; c. 495, s. 4; 1969, cc. 79, 155, 176; c. 234, s. 1; c. 452; c. 1003, s. 4; 1973, c. 476, s. 128; c. 822, s. 1.)

History of Former Statute. — See Lafayette Transp. Serv., Inc. v. County of Robeson, 283 N.C. 494, 196 S.E.2d 770 (1973).

Constitutionality. — Former § 153-272, authorizing counties to regulate private collectors of garbage was not an unconstitutional delegation of legislative power but came within the exception permitting the delegation to municipal corporations and to counties of power to legislate concerning local problems. Porter v. Suburban San. Serv., Inc., 283 N.C. 479, 196 S.E.2d 760 (1973).

The most plausible basis for the decisions sustaining the validity of ordinances prohibiting anyone other than the city itself, or its independent contractor, from transporting garbage is that the public health can best be protected if the city authorities have but one scavenger to supervise. Porter v. Suburban San. Serv., Inc., 283 N.C. 479, 196 S.E.2d 760 (1973).

§ 153A-137. Cable television franchises. — Consistent with the rules and regulations of the Federal Communications Commission, a county may by ordinance grant upon reasonable terms franchises for the operation of cable television systems within any portion of the county, exclusive of incorporated areas and make it unlawful to operate such a system without a franchise. A franchise may not be granted for a period longer than the maximum term prescribed by the Federal Communications Commission.

As used in this section, "cable television system" means a facility that, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television stations and distributes these signals by wire or cable to subscribing members of the public who pay for the service. "Cable television system" does not include a facility that serves only the residents of one or more apartment dwellings under common ownership, control, or management and commercial establishments located on the premises of such an apartment dwelling. (1973, c. 822, s. 1.)

§ 153A-138. Registration of mobile homes, house trailers, etc. — A county may by ordinance provide for the annual registration of mobile homes, house trailers and similar vehicular equipment designed for use as living or business quarters and for the display of a sticker or other device thereon as evidence of such registration. No fee shall be charged for such registration. (1975, c. 693.)

§§ 153A-139 to 153A-145: Reserved for future codification purposes.

ARTICLE 7.

Taxation.

§ 153A-146. General power to impose taxes. — A county may impose taxes only as specifically authorized by act of the General Assembly. Except when the statute authorizing a tax provides for penalties and interest, the power to impose a tax includes the power to impose reasonable penalties for failure to declare tax liability, if required, and to impose penalties or interest for failure to pay taxes lawfully due within the time prescribed by law or ordinance. The power to impose a tax also includes the power to provide for its administration in a manner not inconsistent with the statute authorizing the tax. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1973, c. 822, s. 1.)

Cross Reference. — See N.C. Const., Art. V, § 6, and the note thereto.

County Authority to Levy Taxes Subject to Limitations. — While the General Assembly may regulate the amount and methods for raising county revenues, the present system of county government contemplates that the function shall be performed by the county authorities, subject to the limitations prescribed by the Constitution. Parker v. Board of Comm'rs, 104 N.C. 166, 10 S.E. 137 (1889).

Discretion of Commissioners. — Where it was alleged that a board of commissioners had not levied a sufficient tax to defray the ordinary expenses of the county, on account of the levy of a tax to pay for repairing the courthouse, it was held to be no ground for interference by the courts. Long v. Commissioners of Richmond County, 76 N.C. 273 (1877).

The requirement that every act levying taxes shall state the objects to which they shall be applied (Const., art. V, § 5) has no application to taxes levied by the county authorities for county purposes. Parker v. Board of Comm'rs, 104 N.C. 166, 10 S.E. 137 (1889).

Mandamus Lies to Compel Levy of Tax. — A plaintiff, upon a proper prayer for judgment, may have a mandamus to compel the board of commissioners to levy a tax and pay the debt of a county. Winslow v. Commissioners of Perquimans County, 64 N.C. 218 (1870).

Enjoining Levy of Unconstitutional Tax. — A taxpayer may enjoin county commissioners from making a tax levy to pay interest on railroad bonds issued under an unconstitutional statute, without restoring to the bona fide holders of the bonds the consideration paid therefor. Graves v. Commissioners, 135 N.C. 49, 47 S.E. 134 (1904).

§ 153A-147. Remedies for collecting taxes other than property taxes. — In addition to any other remedies provided by law, a county may collect any county tax by use of the remedies of levy and sale and attachment and garnishment, under the rules and according to the procedures prescribed by the Machinery Act (Chapter 105, Subchapter II) for the enforcement of tax liability against personal property. However, these remedies become available only on the due date of the tax and not before that time. (1973, c. 822, s. 1.)

§ 153A-148. Continuing taxes. — Except for taxes levied on property under the Machinery Act (Chapter 105, Subchapter II), a county may impose any authorized tax by a permanent ordinance that shall stand from year to year until amended or repealed, and it is not necessary to reimpose the tax in each annual budget ordinance. (1973, c. 822, s. 1.)

§ 153A-149. Property taxes; authorized purposes; rate limitation. — (a) Pursuant to Article V, Sec. 2(5) of the Constitution of North Carolina, the

General Assembly confers upon each county in this State the power to levy, within the limitations set out in this section, taxes on property having a situs within the county under the rules and according to the procedures prescribed in the Machinery Act (Chapter 105, Subchapter II).

(b) Each county may levy property taxes without restriction as to rate or amount for the following purposes:

(1) Courts. — To provide adequate facilities for and the county's share of the cost of operating the General Court of Justice in the county.
(2) Debt Service. — To pay the principal of and interest on all general obligation bonds and notes of the county.
(3) Deficits. — To supply an unforeseen deficiency in the revenue (other than revenues of public enterprises), when revenues actually collected or received fall below revenue estimates made in good faith and in accordance with the Local Government Budget and Fiscal Control Act.
(4) Elections. — To provide for all federal, State, district and county elections.
(5) Jails. — To provide for the operation of a jail and other local confinement facilities.
(6) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.
(7) Schools. — To provide for the county's share of the cost of kindergarten, elementary, secondary, and post-secondary public education.
(8) Social Services. — To provide for public assistance required by Chapters 108 and 111 of the General Statutes.

(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to an effective combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation before the application of any assessment ratio. To find the actual rate limit for a particular county, divide the effective rate limit of one dollar and fifty cents ($1.50) by the county assessment ratio. Authorized purposes subject to the rate limitation are:

(1) To provide for the general administration of the county through the board of county commissioners, the office of the county manager, the office of the county budget officer, the office of the county finance officer, the office of the county tax supervisor, the office of the county tax collector, the county purchasing agent, and the county attorney, and for all other general administrative costs not allocated to a particular board, commission, office, agency, or activity of the county.
(2) Agricultural Extension. — To provide for the county's share of the cost of maintaining and administering programs and services offered to agriculture by or through the Agricultural Extension Service or other agencies.
(3) Air Pollution. — To maintain and administer air pollution control programs.
(4) Airports. — To establish and maintain airports and related aeronautical facilities.
(5) Ambulance Service. — To provide ambulance services, rescue squads, and other emergency medical services.
(6) Animal Protection and Control. — To provide animal protection and control programs.
(7) Beach Erosion and Natural Disasters. — To provide for shoreline protection, beach erosion control, and flood and hurricane protection.
(8) Cemeteries. — To provide for cemeteries.
(9) Civil Preparedness. — To provide for civil preparedness programs.

(10) Debts and Judgments. — To pay and discharge any valid debt of the county or any judgment lodged against it, other than debts and judgments evidenced by or based on bonds and notes.
(10a) Defense of Employees and Officers. — To provide for the defense of, and payment of civil judgments against, employees and officers or former employees and officers, as authorized by this Chapter.
(11) Fire Protection. — To provide fire protection services and fire prevention programs.
(12) Forest Protection. — To provide forest management and protection programs.
(13) Health. — To provide for the county's share of maintaining and administering services offered by or through the county or district health department.
(14) Historic Preservation. — To undertake historic preservation programs and projects.
(15) Hospitals. — To establish, support and maintain public hospitals and clinics, and other related health programs and facility, or to aid any private, nonprofit hospital, clinic, related facilities, or other health program or facility.
(16) Human Relations. — To undertake human relations programs.
(17) Joint Undertakings. — To cooperate with any other county, city, or political subdivision in providing any of the functions, services, or activities listed in this subsection.
(18) Law Enforcement. — To provide for the operation of the office of the sheriff of the county and for any other county law-enforcement agency not under the sheriff's jurisdiction.
(19) Libraries. — To establish and maintain public libraries.
(20) Mapping. — To provide for mapping the lands of the county.
(21) Medical Examiner. — To provide for the county medical examiner or coroner.
(22) Mental Health. — To provide for the county's share of the cost of maintaining and administering services offered by or through the county or area mental health department.
(23) Open Space. — To acquire open space land and easements in accordance with Article 19, Part 4, Chapter 160A of the General Statutes.
(24) Parking. — To provide off-street lots and garages for the parking and storage of motor vehicles.
(25) Parks and Recreation. — To establish, support and maintain public parks and programs of supervised recreation.
(26) Planning. — To provide for a program of planning and regulation of development in accordance with Article 18 of this Chapter and Article 19, Parts 3A and 6, of Chapter 160A of the General Statutes.
(27) Ports and Harbors. — To participate in programs with the North Carolina Ports Authority and provide for harbor masters.
(28) Register of Deeds. — To provide for the operation of the office of the register of deeds of the county.
(29) Sewage. — To provide sewage collection and treatment services.
(30) Social Services. — To provide for the public welfare through the maintenance and administration of public assistance programs not required by Chapters 108 and 111 of the General Statutes, and by establishing and maintaining a county home.
(31) Solid Waste. — To provide solid waste collection and disposal services, and to acquire and operate landfills.
(32) Surveyor. — To provide for a county surveyor.

(33) Veterans' Service Officer. — To provide for the county's share of the cost of services offered by or through the county veterans' service officer.

(34) Water. — To provide water supply and distribution systems.

(35) Watershed Improvement. — To undertake watershed improvement projects.

(36) Water Resources. — To participate in federal water resources development projects.

(37) Armories. — To supplement available State or federal funds to be used for the construction, (including the acquisition of land), enlargement or repair of armory facilities for the North Carolina national guard.

(d) With an approving vote of the people, any county may levy property taxes for any purpose for which the county is authorized by law to appropriate money. Any property tax levy approved by a vote of the people shall not be counted for purposes of the rate limitation imposed in subsection (c).

The county commissioners may call a referendum on approval of a property tax levy. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 10 days after any other referendum or election to be held in the county and already validly called or scheduled by law at the time the tax referendum is called. The referendum shall be conducted by the county board of elections. The clerk to the board of commissioners shall publish a notice of the referendum at least twice. The first publication shall be not less than 14 days and the second publication not less than seven days before the last day on which voters may register for the referendum. The notice shall state the date of the referendum, the purpose for which it is being held, and a statement as to the last day for registration for the referendum under the election laws then in effect.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall . . . . County be authorized to levy annually a property tax at an effective rate not in excess of . . . . cents on the one hundred dollars ($100.00) value of property subject to taxation for the purpose of . . . . ?

(2) Shall . . . . County be authorized to levy annually a property tax at a rate not in excess of that which will produce $. . . . . for the purpose of . . . .?

(3) Shall . . . . County be authorized to levy annually a property tax without restriction as to rate or amount for the purpose of . . . .?

If a majority of those participating in the referendum approve the proposition, the board of commissioners may proceed to levy annually a property tax within the limitations (if any) described in the proposition.

The board of elections shall canvass the referendum and certify the results to the board of commissioners. The board of commissioners shall then certify and declare the result of the referendum and shall publish a statement of the result once, with the following statement appended: "Any action or proceeding challenging the regularity or validity of this tax referendum must be begun within 30 days after (date of publication)." The statement of results shall be filed in the clerk's office and inserted in the minutes of the board.

Any action or proceeding in any court challenging the regularity or validity of a tax referendum must be begun within 30 days after the publication of the results of the referendum. After the expiration of this period of limitation, no right of action or defense based upon the invalidity of or any irregularity in the referendum shall be asserted, nor shall the validity of the referendum be open to question in any court upon any ground whatever, except in an action or proceeding begun within the period of limitation prescribed herein.

Except for supplemental school taxes and except for tax referendums on functions not included in subsection (c) of this section, any referendum held before July 1, 1973, on the levy of property taxes is not valid for the purposes of this subsection. Counties in which such referendums have been held may support programs formerly supported by voted property taxes within the general rate limitation set out in subsection (c) at any appropriate level and are not subject to the former voted rate limitation.

(e) With an approving vote of the people, any county may increase the property tax rate limitation imposed in subsection (c) and may call a referendum for that purpose. The referendum may be held at the same time as any other referendum or election, but may not be otherwise held within the period of time beginning 30 days before and ending 30 days after any other referendum or election. The referendum shall be conducted by the county board of elections.

The proposition submitted to the voters shall be substantially in the following form: "Shall the effective property tax rate limitation applicable to . . . . County be increased from . . . . . . on the one hundred dollars ($100.00) value of property subject to taxation to . . . . on the one hundred dollars ($100.00) value of property subject to taxation?"

If a majority of those participating in the referendum approve the proposition, the rate limitation imposed in subsection (c) shall be increased for the county.

(f) With respect to any of the categories listed in subsections (b) and (c) of this section, the county may provide the necessary personnel, land, buildings, equipment, supplies, and financial support from property tax revenues for the program, function, or service.

(g) This section does not authorize any county to undertake any program, function, joint undertaking, or service not otherwise authorized by law. It is intended only to authorize the levy of property taxes within the limitations set out herein to finance programs, functions, or services authorized by other portions of the General Statutes or by local acts. (1973, c. 803, s. 1; c. 822, s. 2; c. 963; c. 1446, s. 25; 1975, c. 734, s. 17; 1977, c. 148, s. 5; c. 834, s. 3.)

Editor's Note. — The above section was enacted as § 153-65 by Session Laws 1973, c. 803, s. 1. As directed by Session Laws 1973, c. 822, s. 2, it has been substituted for § 153A-149, as enacted by Session Laws 1973, c. 822, s. 1.

The 1975 amendment substituted "Preparedness" for "Defense" and "preparedness" for "defense" in subdivision (c)(9).

The first 1977 amendment substituted "Article 18" for "Article 17" in subdivision (c)(26).

The second 1977 amendment added subdivision (10a) to subsection (c).

Taxes Leviable Yearly. — General taxes for county purposes are leviable but once in the year. Bradshaw v. Board of Comm'rs, 92 N.C. 278 (1885).

Tax Rate Variable. — There is no constitutional requirement that the tax rate for county purposes shall be the same everywhere. It varies in the different counties, and may vary in different townships, parts of townships, districts, towns, and cities in the same county. Jones v. Commissioners, 143 N.C. 60, 55 S.E. 427 (1906).

Property Subject to Taxation. — All of the property, including solvent credits, in the State, shall be assessed and taxed at its value in money. Caldwell Land & Lumber Co. v. Smith, 146 N.C. 199, 59 S.E. 653 (1907).

Back Tax. — In Caldwell Land & Lumber Co. v. Smith, 146 N.C. 199, 59 S.E. 653 (1907), the court said: "We have no doubt of the power of the legislature to provide for the listing, assessment, and taxing of personal property omitted to be listed by the owner as the law requires. Nor do we perceive any reason why it may not be taxed for five or more preceding years if it has escaped taxation so long. These questions have been settled by several decisions of this court. Kyle v. Mayor & Comm'rs, 75 N.C. 445 (1876); North Carolina R.R. v. Commissioners of Alamance, 82 N.C. 260 (1880); City of Wilmington v. Cronly, 122 N.C. 388, 30 S.E. 9 (1898)."

Assessment Held Not a Tax. — An assessment for the building of a stock law fence is not a tax which requires a referendum vote by the people. Tripp v. Commissioners of Pitt County, 158 N.C. 180, 73 S.E. 896 (1912).

Exemption from Special Tax. — Where an act provided for the construction of a fence to inclose the whole of several districts and that the commissioners should levy a special tax on all the real estate in the district which was taxable by the State and county, it was held not to embrace the real estate of schools and railroads, which was not taxable for general purposes. Bradshaw v. Board of Comm'rs, 92 N.C. 278 (1885).

Tax Raised for One Purpose and Applied to Another. — In Long v. Commissioners of Richmond County, 76 N.C. 273 (1877), the court said: "We know of no statute nor any rule of law or of public policy which prevents county commissioners from applying a tax raised professedly for one purpose to any other legitimate purpose. There may, perhaps, be an exception where a tax is levied by a special authority from the legislature, or upon the vote of the people, which would not otherwise be lawful."

When Tax Collected Exceeds Limits of Special Purpose. — Where a statute authorizing the levy of a tax beyond the constitutional limit for a special purpose is intra vires, the taxes collected beyond the requirements of the special purpose may be turned into the general fund and used for general purposes, but where the act authorizes the levy partly for a "special purpose" and partly for general purposes it is ultra vires and no part of the levy can be collected. Williams v. Commissioners of Craven County, 119 N.C. 520, 26 S.E. 150 (1896).

Funds Impressed with a Trust. — Where taxes are levied and collected to pay coupons on bonds issued by a county, the funds so collected are impressed with a trust for the benefit of the owners of the coupons. Board of Comm'rs v. Tollman, 145 F. 753 (1906).

Tax Necessary to Maintain Schools for Required Term. — When it becomes necessary, the county commissioners are required to levy a tax sufficient to maintain the county schools for the required term each year. The former constitutional limitation did not apply to defeat such a levy. Collie v. Commissioners of Franklin County, 145 N.C. 170, 59 S.E. 44 (1907), expressly overruling Barksdale v. Commissioners of Sampson County, 93 N.C. 472 (1885), and Board of Educ. v. Board of Comm'rs, 111 N.C. 578, 16 S.E. 621 (1892); Southern Ry. v. Cherokee County, 177 N.C. 86, 97 S.E. 758 (1919).

Tax to Erect and Maintain Courthouse. — The power of limited taxation for the purpose of erecting and maintaining a county courthouse and its exercise is no invasion of the Bill of Rights. Lockhart v. Harrington, 8 N.C. 408 (1821).

Taxpayers cannot enjoin the levy of taxes necessary to pay the principal and interest on bonds issued for repairs to the courthouse. Harrell v. Board of Comm'rs, 206 N.C. 225, 173 S.E. 614 (1934).

Resolution Correcting Record as to Purpose of Levy. — Resolutions of the board of county commissioners correcting records as to the purpose of tax levies will, in the absence of evidence to the contrary, be presumed bona fide. Atlantic Coast Line R.R. v. Duplin County, 226 N. C. 719, 40 S.E.2d 371 (1946).

§ 153A-150. Reserve for octennial reappraisal. — Before the beginning of the fiscal year immediately following the effective date of an octennial reappraisal of real property conducted as required by G.S. 105-286, the county budget officer shall present to the board of commissioners an eight-year budget for financing the cost of the next octennial reappraisal. The budget shall estimate the cost of the reappraisal and shall propose a plan for raising the necessary funds in eight annual installments during the next eight fiscal years, with all installments as nearly uniform as practicable. The board shall consider this budget, making any amendments to the budget it deems advisable, and shall adopt a resolution establishing a special reserve fund for the next octennial reappraisal. In the budget ordinance of the first fiscal year of the plan, the board of commissioners shall appropriate to the special reappraisal reserve fund the amount set out in the plan for the first year's installment. When the county budget for each succeeding fiscal year is in preparation, the board shall review the eight-year reappraisal budget with the budget officer and shall amend it, if necessary, so that it will reflect the probable cost at that time of the reappraisal and will produce the necessary funds at the end of the eight-year period. In the budget ordinance for each succeeding fiscal year, the board shall appropriate to the special reappraisal reserve fund the amount set out in the plan as due in that year.

Moneys appropriated to the special reappraisal reserve fund shall not be available or expended for any purpose other than the reappraisal of real property required by G.S. 105-286, except that the funds may be deposited at interest or invested as permitted by G.S. 159-30. If there is a fund balance in the reserve fund following payment for the required reappraisal, it shall be retained in the fund for use in financing the next required reappraisal.

Within 10 days after the adoption of each annual budget ordinance, the county finance officer shall report to the Department of Revenue, on forms to be supplied by the Department, the terms of the county's eight-year reappraisal budget, the current condition of the special reappraisal reserve fund, and the amount appropriated to the reserve fund in the current fiscal year. (1959, c. 704, s. 6; 1971, c. 806, s. 4; c. 931, s. 2; 1973, c. 476, s. 193; c. 822, s. 1.)

§ 153A-151. Sales tax. — A county may levy a local sales and use tax under the rules and according to the procedures prescribed by the Local Government Sales and Use Tax Act (Chapter 105, Subchapter VIII). (1973, c. 822, s. 1.)

§ 153A-152. Privilege license taxes. — A county may levy privilege license taxes on trades, occupations, professions, businesses, and franchises to the extent authorized by Schedule B of the Revenue Act (Chapter 105, Subchapter I, Article 2) and any other acts of the General Assembly. (1973, c. 822, s. 1.)

§ 153A-153. Animal tax. — A county may levy an annual license tax on the privilege of keeping dogs and other pets within the county. (1973, c. 822, s. 1.)

§ 153A-154. Cable television franchise tax. — A county may levy an annual franchise tax on cable television companies franchised under G.S. 153A-137. (1973, c. 822, s. 1.)

§§ 153A-155 to 153A-157: Reserved for future codification purposes.

ARTICLE 8.

County Property.

Part 1. Acquisition of Property.

§ 153A-158. Power to acquire property. — A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. (1868, c. 20, ss. 3, 8; 1879, c. 144, s. 1; Code, ss. 704, 707; Rev., ss. 1310, 1318; C. S., ss. 1291, 1297; 1973, c. 822, s. 1.)

Necessary Expenses. — The cost of the erection of a courthouse is a necessary expense of a county, and the exercise of the discretionary power of the board of commissioners in providing to meet it is not reviewable by the courts. Vaughn v. Board of Comm'rs, 117 N.C. 429, 23 S.E. 354 (1895).

The building and repairing of a courthouse by the county is a part of its necessary expense. Burgin v. Smith, 151 N.C. 561, 66 S.E. 607 (1909); Jackson v. Board of County Comm'rs, 171 N.C. 379, 88 S.E. 521 (1916).

A jail is a necessary county expense, and, in the absence of statutory restrictions, the county commissioners may pledge the credit of the county in order to obtain one. Haskett v. Tyrrell County, 152 N.C. 714, 68 S.E. 202 (1910).

Discretion of Commissioners. — The board of commissioners has the discretionary power to issue and sell or discount the notes of the county to provide the means to pay for a courthouse, and such discretion will not be interfered with by the courts. Vaughn v. Board of Comm'rs, 117 N.C. 429, 23 S.E. 354 (1895).

Courts cannot substitute their judgment for that of the county officials honestly and fairly exercised. For a court to enjoin a proposed expenditure, there must be allegation and proof that the county officials acted in wanton disregard of public good. Barbour v. Carteret County, 255 N.C. 177, 120 S.E.2d 448 (1961).

When Legislature Imposes Limit on Expense. — When a special act of the legislature has imposed a limit on the expense of a county to be incurred in improving its courthouse, the commissioners cannot avoid the will of the legislature as therein declared by setting up a general power of contracting debts for necessary expenses, limited only by the constitutional limitation of taxation, and thus under an entire contract made beforehand expend a larger amount for the purpose than that prescribed by the special act. Burgin v. Smith, 151 N.C. 561, 66 S.E. 607 (1909).

Special Tax. — While the county commissioners are clothed with the necessary power to erect and repair county buildings, they have no power to levy a special tax out of which to pay the interest and create a sinking fund, unless they have the special authority of the General Assembly. Harrell v. Board of Comm'rs, 206 N.C. 225, 173 S.E. 614 (1934), holding that the county had such authority under former §§ 153-1, 153-9(8) and 153-77.

County Bound by Conditions Expressed in Conveyance. — Where a county, owning a site upon which to build its courthouse, is authorized by statute to buy, sell, and exchange real estate surrounding it upon such terms and conditions as it may deem just and proper, and for the best interest of the county, and in pursuance of this authority has acquired a conveyance of lands from adjoining owners upon condition that they shall be used as a public square and kept open for that purpose, etc., it is held, that whether the conditions be called conditions subsequent or otherwise, they are within the purview of the authority conferred upon the county; and, coming within the intent of the parties as expressed in the conveyance, and forming a material part of the consideration for the lands, they are valid and binding upon the county. Guilford County v. Porter, 167 N.C. 366, 83 S.E. 564 (1914).

Commissioners Not Individually Liable for Failure to Take Contractor's Bond. — The county commissioners are not individually liable for the failure of their ministerial duty to take the bond required from a contractor for the erection of a county home, such not having been expressly declared; and the remedy is by indictment. Fore v. Feimster, 171 N.C. 551, 88 S.E. 977 (1916).

§ 153A-159. Power of eminent domain conferred. — In addition to any power conferred by any other general law or local act, each county possesses the power of eminent domain and may acquire by condemnation the fee or any lesser interest in property, either inside or outside the county, for the following purposes:

(1) Establishing, extending, enlarging, or improving any of the public enterprises listed in G.S. 153A-274.

(2) Establishing, enlarging, or improving parks, playgrounds, and other recreational facilities.

(3) Constructing, enlarging, or improving hospital facilities.

(4) Constructing, enlarging, or improving library facilities.

(5) Constructing, enlarging, or improving courthouses, jails, office buildings, fire stations, and other buildings for use by the county or any board, commission, or agency thereof.

(6) Establishing drainage programs and programs to prevent obstructions to the natural flow of streams, creeks and natural water channels or improving drainage facilities.

The power to acquire property by condemnation does not depend on any prior effort to acquire the same property by grant or purchase, nor is the power to negotiate for the grant or purchase of property impaired by initiation of condemnation proceedings for acquisition of the same property.

In exercising the power of eminent domain, a county may in its discretion use the procedures of Chapter 40, Article 2; or the procedures of Chapter 160A, Article 11; or the procedures of any other general law or local act applicable to the county. (1961, c. 1001, s. 1; 1965, c. 934; 1973, c. 822, s. 1; 1975, c. 265, s. 1.)

Local Modification. — Cabarrus: 1975, c. 21; Union: 1977, c. 293.

Editor's Note. — The 1975 amendment added subdivision (6) to the first paragraph.

For an article urging revision and recodification of North Carolina's eminent domain laws, see 45 N.C.L. Rev. 587 (1967).

§ 153A-160. Limitations on the power of eminent domain. — (a) A county does not possess the power of eminent domain with respect to property owned by the State of North Carolina unless the State consents to the taking. The State's consent shall be given by the Council of State, or by the Secretary of Administration if the Council of State has delegated this power to him. In a condemnation proceeding against State property, consented to by the State, the only issue shall be the compensation to be paid for the property by the county.

(b) A county possesses the power of eminent domain for the purpose of acquiring any interest in property owned by another county, a city, or a municipal corporation organized for a special purpose only if the property proposed to be taken is not being used and is not needed for any governmental or proprietary purpose.

(c) A county possesses the power of eminent domain for the purpose of acquiring any interest in property already devoted to the public use and owned by a public service corporation, including public utilities as defined in Chapter 62 and electric and telephone membership corporations, only if the acquisition will not prevent or unreasonably impair the continued devotion to the public use of the properties and their operation by the public service corporation. (1973, c. 822, s. 1; 1975, c. 879, s. 46.)

§ 153A-161. Costs in unsuccessful condemnation actions and in inverse condemnation actions. — If a county or an agency, board, or commission of a county institutes an action to acquire by condemnation any interest in real property and

(1) If the final judgment in the action is that the county or the agency, board, or commission is not authorized to condemn the property; or

(2) If the county or agency, board, or commission abandons the action,

the court with jurisdiction over the action shall award each owner of property sought to be condemned a sum that, in the opinion of the court, will reimburse the owner for his reasonable costs, disbursements, and expenses (including reasonable attorney, appraisal, and engineering fees) incurred because of the action.

If an action is brought against a county or an agency, board, or commission of a county seeking compensation for the taking of any interest in property by the county or agency, board, or commission and judgment is for the plaintiff, the court shall award to the plaintiff as a part of the judgment a sum that, in the opinion of the court, will reimburse the plaintiff for his reasonable costs, disbursements, and expenses (including reasonable attorney, appraisal, and engineering fees) incurred because of the action. (1973, c. 822, s. 1.)

§ 153A-162. Acquisition of remnants. — A county or an agency, board, or commission of a county may offer to acquire and may acquire the entire tract or parcel of an owner if the acquisition, by purchase or eminent domain, of only a part of the tract or parcel would leave the owner with an uneconomic remnant. (1973, c. 822, s. 1.)

§ 153A-163. Acquisition of property at a judicial sale, execution sale, or sale pursuant to a power of sale; disposition of such property. — A county, city, or other unit of local government may purchase real property at a judicial sale, an execution sale, or a sale made pursuant to a power of sale, to secure a debt due the county, city, or other unit. The purchasing government may sell any property so acquired by private sale for not less than the amount of its bid or may sell or exchange the property for any amount according to the procedures prescribed by Chapter 160A, Article 12. (1868, c. 20, s. 8; 1879, c. 144, s. 1; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1973, c. 822, s. 1.)

§ 153A-164. Joint buildings. — Two or more counties, cities, other units of local government (including local boards of education), or any combination of such governments may jointly acquire or construct public buildings to house offices, departments, bureaus, agencies, or facilities of each government. The governments may acquire any land necessary for a joint building or may use land already held by one of the governments.

In exercising the powers granted by this section, the governments shall proceed according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1965, c. 682, s. 1; 1973, c. 822, s. 1.)

§ 153A-165. Leases. — A county may lease as lessee, with or without option to purchase, any real or personal property for any authorized public purpose. A lease of personal property with an option to purchase is subject to Chapter 143, Article 8. (1973, c. 822, s. 1.)

§§ 153A-166 to 153A-168: Reserved for future codification purposes.

Part 2. Use of County Property.

§ 153A-169. Care and use of county property; sites of county buildings. —The board of commissioners shall supervise the maintenance, repair, and use of all county property. The board may issue orders and adopt by ordinance or resolution regulations concerning the use of county property, may designate and redesignate the location of any county department, office, or agency, and may designate and redesignate the site for any county building, including the courthouse. Before it may redesignate the site of the courthouse, the board of commissioners shall cause notice of its intention to do so to be published once at least four weeks before the meeting at which the redesignation is made. (1868, c. 20, ss. 3, 8; Code, ss. 704, 707; Rev., ss. 1310, 1318; C. S., ss. 1291, 1297; 1925, c. 229; 1927, c. 91, ss. 11, 13; 1957, c. 909, s. 1; 1961, c. 811; 1967, c. 581, s. 1; 1973, c. 822, s. 1.)

Duties Inherent in Office of County Commissioner. — County commissioners, in approving the design, the method of construction, the site for a public building, and the amount to be paid for the site, are performing duties inherent in their offices, expressly conferred by the legislature. Barbour v. Carteret County, 255 N.C. 177, 120 S.E.2d 448 (1961).

Extent of Commissioners' Duty. — The commissioners have the duty of employing such agents, and raising and appropriating such moneys, as may be sufficient to keep the public buildings in repair, and maintain them in such a condition as to prevent any noxious and offensive exhalations from proceeding from any of them put to the private use of the people. Threadgill v. Board of Comm'rs, 99 N.C. 352, 6 S.E. 189 (1888), stating the measure and extent of official responsibility for a privy.

Discretion of Commissioners. — It is within the sound discretion of the county commissioners to have the courthouse or jail of the county repaired or to erect new ones on the same sites as a necessary county expense, which will not be reviewed in the courts in the absence of mala fides; and should a bill of indictment be drawn by the solicitor, at the request of the judge holding the courts of the county, and a true bill be found by the grand jury thereon, it is open to the commissioners to set up any available defense they may have. Jackson v. Board of County Comm'rs, 171 N.C. 379, 88 S.E. 521 (1916).

Repairing a courthouse is a necessary county expense. Burgin v. Smith, 151 N.C. 561, 66 S.E. 607 (1909).

Duty of Commissioners to Erect and Maintain Courthouse. — It is the duty of the county commissioners to provide a sufficient courthouse and keep it in repair. They are cognate duties, and failure as to them is "neglect of duty." State v. Leeper, 146 N.C. 655, 61 S.E. 585 (1908).

Remedy for Neglect of Duty. — A mandamus will not lie against county commissioners to compel them to provide a sufficient courthouse. For such neglect of duty, the remedy is by indictment. And the indictment need not allege corrupt intent. State v. Leeper, 146 N.C. 655, 61 S.E. 585 (1908).

The site of a county building embraces only the space occupied by the building and such adjacent land as is reasonably required for the convenient use of the building. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

§ 153A-170. Regulation of parking on county property. — A county may by ordinance regulate parking of motor vehicles on county-owned property. Such an ordinance may be enforced pursuant to G.S. 153A-123. In addition, the ordinance may provide that vehicles parked in violation thereof may be removed from the property by the county or an agent of the county to a storage area or garage. If a vehicle is so removed, the owner, as a condition of regaining possession of the vehicle, shall be required to pay to the county all reasonable costs incidental to the removal and storage of the vehicle and any fine or penalty due for the violation. (1961, c. 191; 1971, c. 109; 1973, c. 822, s. 1.)

§§ 153A-171 to 153A-175: Reserved for future codification purposes.

Part 3. Disposition of County Property.

§ 153A-176. Disposition of property. — A county may dispose of any real or personal property belonging to it according to the procedures prescribed in Chapter 160A, Article 12. For purposes of this section references in Chapter 160A, Article 12, to the "city," the "council," or a specific city official are deemed to refer, respectively, to the county, the board of commissioners, and the county official who most nearly performs the same duties performed by the specified city official. (1868, c. 20, ss. 3, 8; Code, ss. 704, 707; Rev., ss. 1310, 1318; C. S., ss. 1291, 1297; 1973, c. 822, s. 1.)

Commissioners Act as Fiduciaries or Trustees. — Boards of commissioners, in selling or leasing real property belonging to the county, are acting as fiduciaries or trustees for the taxpayers and citizens of the county and must exercise their best judgment and skill, as reasonable men, to obtain the best price for the land. Puett v. Gaston County, 19 N.C. App. 231, 198 S.E.2d 440 (1973).

When Commissioners May Not Sell Property. — County commissioners have no power to sell property held for corporate purposes, where its alienation would tend to embarrass or prevent the performance of their duties to the public. Vaughn v. Commissioners of Forsyth County, 118 N.C. 636, 24 S.E. 425 (1896).

Commissioners Do Not Have Power to Mortgage. — Power to sell is not a power to mortgage; hence express authority conferred upon county commissioners to sell real estate of the county at a fair price does not imply power to incumber the same by a mortgage. Threadgill v. Board of Comm'rs, 99 N.C. 352, 6 S.E. 189 (1888).

Cannot Mortgage Courthouse Site. — County commissioners had no authority to convey the land on which they proposed to erect the courthouse by a mortgage deed to secure the bonds issued to build it, and thereby render the site and buildings liable to sale for the satisfaction of the debt. Vaughn v. Commissioners of Forsyth County, 118 N.C. 636, 24 S.E. 425 (1896).

Right of Taxpayer to Bring Action to Restrain Execution of Mortgage. — Though a proposed mortgage of county land by the county commissioners to secure bonds issued to build a courthouse would be void, and equity would enjoin foreclosure thereunder, a taxpayer may bring an action to restrain the execution of the mortgage without waiting until foreclosure is threatened. Vaughn v. Commissioners of Forsyth County, 118 N.C. 636, 24 S.E. 425 (1896).

§ 153A-177. Reconveyance of property donated to a local government. — If real or personal property is conveyed without consideration to a county, city, or other unit of local government to be used for a specific purpose set out in the instrument of conveyance and the governing body of the county, city, or other unit of local government determines that the property will not be used for that purpose, the county, city, or other unit of local government may reconvey the property without consideration to the grantor or his heirs, assigns, or nominees. Before it may make a reconveyance, the county, city, or other unit of local government shall publish once a week for two weeks notice of its intention to do so. (1937, c. 441; 1973, c. 822, s. 1.)

§§ 153A-178 to 153A-184: Reserved for future codification purposes.

ARTICLE 9.

Special Assessments.

§ 153A-185. Authority to make special assessments. — A county may make special assessments against benefited property within the county for all or part of the costs of:

(1) Constructing, reconstructing, extending, or otherwise building or improving water systems;
(2) Constructing, reconstructing, extending, or otherwise building or improving sewage disposal systems;
(3) Acquiring, constructing, reconstructing, extending, or otherwise building or improving beach erosion control or flood and hurricane protection works;
(4) Constructing, reconstructing, paving, widening, installing curbs and gutters, and otherwise building and improving streets, as provided in G.S. 153A-205.

A county may not assess property within a city pursuant to subdivision (1) or (2) of this section unless the governing board of the city has by resolution approved the project. (1963, c. 985, s. 1; 1965, c. 714; 1969, c. 474, s. 1; 1973, c. 822, s. 1; 1975, c. 487, s. 1.)

Editor's Note. — The 1975 amendment added subdivision (4).

§ 153A-186. Bases for making assessments. — (a) For water or sewer projects, assessments may be made on the basis of:

(1) The frontage abutting on the project, at an equal rate per foot of frontage; or
(2) The street frontage of the lots served, or subject to being served, by the project, at an equal rate per foot of frontage; or
(3) The area of land served, or subject to being served, by the project, at an equal rate per unit of area; or
(4) The valuation of land served, or subject to being served, by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or
(5) The number of lots served, or subject to being served, by the project when the project involves extension of an existing system to a residential or commercial subdivision, at an equal rate per lot; or
(6) A combination of two or more of these bases.

(b) For beach erosion control or flood and hurricane protection works, assessments may be made on the basis of:

(1) The frontage abutting on the project, at an equal rate per foot of frontage; or
(2) The frontage abutting on a beach or shoreline protected or benefited by the project, at an equal rate per foot of frontage; or
(3) The area of land benefited by the project, at an equal rate per unit of area; or
(4) The valuation of land benefited by the project, being the value of the land without improvements as shown on the tax records of the county, at an equal rate per dollar of valuation; or
(5) A combination of two or more of these bases.

(c) Whenever the basis selected for assessment is either area or valuation, the board of commissioners shall provide for the laying out of one or more benefit zones according (i), in water or sewer projects, to the distance of benefited property from the project being undertaken and (ii), in beach erosion control or flood and hurricane protection works, to the distance from the shoreline, the distance from the project, the elevation of the land, or other relevant factors. If more than one benefit zone is established, the board shall establish differing rates of assessment to apply uniformly throughout each benefit zone.

(d) For each project, the board of commissioners shall endeavor to establish an assessment method from among the bases set out in this section that will most accurately assess each lot or parcel of land according to the benefit conferred upon it by the project. The board's decision as to the method of assessment is final and not subject to further review or challenge. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-187. Corner lot exemptions. — The board of commissioners may establish schedules of exemptions from assessments for water or sewer projects for corner lots when water or sewer lines are installed along both sides of the lots. A schedule of exemptions shall be based on categories of land use (residential, commercial, industrial, and agricultural) and shall be uniform for each category. A schedule may not allow exemption of more than seventy-five percent (75%) of the frontage of any side of a corner lot, or 150 feet, whichever is greater. (1963, c. 985, s. 1; 1973, c. 822, s. 1.)

§ 153A-188. Lands exempt from assessment. — Except as provided in this Article, no land within a county is exempt from special assessments except land belonging to the United States that is exempt under the provisions of federal statutes and, in the case of water or sewer projects, land within any floodway delineated by a local government pursuant to Chapter 143, Article 21, Part 6. In addition, in the case of water or sewer projects, land owned, leased, or controlled by a railroad company is exempt from assessments by a county to the same extent that it would be exempt from assessments by a city under G.S. 160A-222. (1963, c. 958, s. 1; 1973, c. 822, s. 1.)

§ 153A-189. State participation in improvement projects. — If a county proposes to undertake a project that would benefit land owned by the State of North Carolina or a board, agency, commission, or institution of the State and to finance all or a part of the project by special assessments, the board of commissioners may request the Council of State to authorize the State to pay its ratable part of the cost of the project, and the Council of State may authorize these payments. The Council of State may authorize the Secretary of Administration to approve or disapprove requests from counties for payment pursuant to this section, but a county may appeal to the Council of State if the Secretary disapproves a request. The Council of State may direct that any payment authorized pursuant to this section be made from the Contingency and Emergency Fund of the State of North Carolina or from any other available funds. Except as State payments are authorized pursuant to this section, state-owned property is exempt from assessment under this Article. (1973, c. 822, s. 1; 1975, c. 879, s. 46.)

§ 153A-190. Preliminary resolution; contents. — Whenever the board of commissioners decides to finance all or part of a proposed project by special assessments, it shall first adopt a preliminary assessment resolution containing the following:

(1) A statement of intent to undertake the project;
(2) A general description of the nature and location of the project;
(3) A statement as to the proposed basis for making assessments, which shall include a general description of the boundaries of the area benefited if the basis of assessment is either area or valuation;
(4) A statement as to the percentage of the cost of the work that is to be specially assessed;
(5) A statement as to which, if any, assessments shall be held in abeyance and for how long;

(6) A statement as to the proposed terms of payment of the assessment; and

(7) An order setting a time and place for a public hearing on all matters covered by the preliminary assessment resolution. The hearing shall be not earlier than three weeks and not later than 10 weeks from the day on which the preliminary resolution is adopted. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-191. Notice of preliminary resolution. — At least 10 days before the date set for the public hearing, the board of commissioners shall publish a notice that a preliminary assessment resolution has been adopted and that a public hearing on it will be held at a specified time and place. The notice shall describe generally the nature and location of the improvement. In addition, at least 10 days before the date set for the hearing, the board shall cause a copy of the preliminary assessment resolution to be mailed by first-class mail to each owner, as shown on the county tax records, of property subject to assessment if the project is undertaken. The person designated to mail these resolutions shall file with the board a certificate stating that they were mailed by first-class mail and on what date. In the absence of fraud, the certificate is conclusive as to compliance with the mailing requirements of this section. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-192. Hearing on preliminary resolution; assessment resolution. —At the public hearing, the board of commissioners shall hear all interested persons who appear with respect to any matter covered by the preliminary assessment resolution. At or after the hearing, the board may adopt a final assessment resolution directing that the project or portions thereof be undertaken. The final assessment resolution shall describe the project in general terms (which may be by reference to projects described in the preliminary resolution) and shall set forth the following:

(1) The basis on which the special assessments will be made, together with a general description of the boundaries of the areas benefited if the basis of assessment is either area or valuation;

(2) The percentage of the cost of the work that is to be specially assessed; and

(3) The terms of payment, including the conditions, if any, under which assessments are to be held in abeyance.

The percentage of cost to be assessed may not be different from the percentage proposed in the preliminary assessment resolution, nor may the project authorized be greater in scope than the project described in that resolution. If the board decides that a different percentage of the cost should be assessed than that proposed in the preliminary assessment resolution, or that the project should be greater in scope than that described in that resolution, it shall adopt and advertise a new preliminary assessment resolution as provided in this Article. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-193. Determination of costs. — When a project is complete, the board of commissioners shall determine the project's total cost. In determining total cost, the board may include construction costs, the cost of necessary legal services, the amount of interest paid during construction, the cost of rights-of-way, and the cost of publishing and mailing notices and resolutions. The board's determination of the total cost of a project is conclusive. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-194. Preliminary assessment roll; publication. — When the total cost of a project has been determined, the board of commissioners shall cause a preliminary assessment roll to be prepared. The roll shall contain a brief description of each lot, parcel, or tract of land assessed, the basis for the assessment, the amount assessed against each, the terms of payment, and the name of the owner of each lot, parcel, or tract as far as this can be ascertained from the county tax records. A map of the project on which is shown each lot, parcel, or tract assessed, the basis of its assessment, the amount assessed against it, and the name of its owner as far as this can be ascertained from the county tax records is a sufficient assessment roll.

After the preliminary assessment roll has been completed, the board shall cause the roll to be filed in the clerk's office, where it shall be available for public inspection, and shall set the time and place for a public hearing on the roll. At least 10 days before the date set for the hearing, the board shall publish a notice that the preliminary assessment roll has been completed. The notice shall describe the project in general terms, note that the roll in the clerk's office is available for inspection, and state the time and place for the hearing on the roll. In addition, at least 10 days before the date set for the hearing, the board shall cause a notice of the hearing to be mailed by first-class mail to each owner of property listed on the roll. The mailed notice shall state the time and place of the hearing, note that the roll in the clerk's office is available for inspection, and state the amount as shown on the roll of the assessment against the property of the owner. The person designated to mail these notices shall file with the board a certificate stating that they were mailed by first-class mail and on what date. In the absence of fraud, the certificate is conclusive as to compliance with the mailing requirements of this section. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-195. Hearing on preliminary assessment roll; revision; confirmation; lien. — At the public hearing the board of commissioners shall hear all interested persons who appear with respect to the preliminary assessment roll. At or after the hearing, the board shall annul, modify, or confirm the assessments, in whole or in part, either by confirming the preliminary assessments against any lot, parcel, or tract described in the preliminary assessment roll or by cancelling, increasing, or reducing the assessments as may be proper in compliance with the basis of assessment. If any property is found to be omitted from the preliminary assessment roll, the board may place it on the roll and make the proper assessment. When the board confirms assessments for a project, the clerk shall enter in the minutes of the board the date, hour, and minute of confirmation. From the time of confirmation, each assessment is a lien on the property assessed of the same nature and to the same extent as the lien for county or city property taxes, under the priorities set out in G.S. 153A-200. After the assessment roll is confirmed, the board shall cause a copy of it to be delivered to the county tax collector for collection in the same manner (except as provided in this Article) as property taxes. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-196. Publication of notice of confirmation of assessment roll. — No earlier than 20 days from the date the assessment roll is confirmed, the county tax collector shall publish once a notice that the roll has been confirmed. The notice shall also state that assessments may be paid without interest at any time before the expiration of 30 days from the date that the notice is published and that if they are not paid within this time, all installments thereof shall bear interest as determined by the board of commissioners. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-197. Appeal to the General Court of Justice. — If the owner of, or any person having an interest in, a lot, parcel, or tract of land against which an assessment is made is dissatisfied with the amount of the assessment, he may, within 10 days after the day the assessment roll is confirmed, file a notice of appeal to the appropriate division of the General Court of Justice. He shall then have 20 days after the day the roll is confirmed to serve on the board of commissioners or the clerk a statement of facts upon which the appeal is based. The appeal shall be tried like other actions at law. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-198. Reassessment. — When in its judgment an irregularity, omission, error, or lack of jurisdiction has occurred in any proceeding related to a special assessment made by it, the board of commissioners may set aside the assessment and make a reassessment. In that case, the board may include in the total project cost all additional interest paid, or to be paid, as a result of the delay in confirming the assessment. A reassessment proceeding shall, as far as practicable, follow the comparable procedures of an original assessment proceeding. A reassessment has the same force as if it originally had been made properly. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-199. Payment of assessments in full or by installments. — Within 30 days after the day that notice of confirmation of the assessment roll is published, each owner of assessed property shall pay his assessment in full, unless the board of commissioners has provided that assessments may be paid in annual installments. If payment by installments is permitted, any portion of an assessment not paid within the 30-day period shall be paid in annual installments. The board shall in the assessment resolution determine whether payment may be made by annual installments and set the number of installments, which may not be more than 10. With respect to payment by installment, the board may provide

(1) That the first installment with interest is due on the date when property taxes are due, and one installment with interest is due on the same date in each successive year until the assessment is paid in full, or

(2) That the first installment with interest is due 60 days after the date that the assessment roll is confirmed, and one installment with interest is due on that same day in each successive year until the assessment is paid in full. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-200. Enforcement of assessments; interest; foreclosure; limitations. — (a) Any portion of an assessment that is not paid within 30 days after the day that notice of confirmation of the assessment roll is published shall, until paid, bear interest at a rate to be fixed in the assessment resolution. The maximum rate at which interest may be set is eight percent (8%) per annum.

(b) If an installment of an assessment is not paid on or before the due date, all of the installments remaining unpaid immediately become due, unless the board of commissioners waives acceleration. The board may waive acceleration and permit the property owner to pay all installments in arrears together with interest due thereon and the cost to the county of attempting to obtain payment. If this is done, any remaining installments shall be reinstated so that they fall due as if there had been no default. The board may waive acceleration and reinstate further installments at any time before foreclosure proceedings have been instituted.

(c) A county may foreclose assessment liens under any procedure provided by law for the foreclosure of property tax liens, except that (i) lien sales and lien sale certificates are not required and (ii) foreclosure may be begun at any time after 30 days after the due date. The county is not entitled to a deficiency judgment in an action to foreclose an assessment lien. The lien of special assessments is inferior to all prior and subsequent liens for State, local, and federal taxes, and superior to all other liens.

(d) No county may maintain an action or proceeding to foreclose any special assessment lien unless the action or proceeding is begun within 10 years from the date that the assessment or the earliest installment thereof included in the action or proceeding became due. Acceleration of installments under subsection (b) of this section does not have the effect of shortening the time within which foreclosure may be begun; in that event the statute of limitations continues to run as to each installment as if acceleration had not occurred. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-201. Authority to hold assessments in abeyance. — The assessment resolution may provide that assessments made pursuant to this Article shall be held in abeyance without interest for any benefited property assessed. Water or sewer assessments may be held in abeyance until improvements on the assessed property are connected to the water or sewer system for which the assessment was made, or until a date certain not more than 10 years from the date of confirmation of the assessment roll, whichever event occurs first. Beach erosion control or flood and hurricane protection assessments may be held in abeyance for not more than 10 years from the date of confirmation of the assessment roll. When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

If assessments are to be held in abeyance, the assessment resolution shall classify the property assessed according to general land use, location with respect to the water or sewer system (for water or sewer assessments), or other relevant factors. The resolution shall also provide that the period of abeyance shall be the same for all assessed property in the same class.

Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-202. Assessments on property held by tenancy for life or years; contribution. — (a) Assessments upon real property in the possession or enjoyment of a tenant for life or a tenant for a term of years shall be paid pro rata by the tenant and the remaindermen after the life estate or by the tenant and the owner in fee after the expiration of the tenancy for years according to their respective interests in the land as calculated pursuant to G.S. 37-13.

(b) If a person having an interest in land held by tenancy for life or years pays more than his pro rata share of an assessment against the property, he may maintain an action in the nature of a suit for contribution against any delinquent party to recover from that party his pro rata share of the assessment, with interest thereon from the date of the payment; and in addition, he is subrogated to the right of the county to a lien on the property for the delinquent party's share of the assessment. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

Editor's Note. — Section 37-13, referred to in this section, was repealed by Session Laws 1973, c. 729, s. 3. See now § 37-36.

§ 153A-203. Lien in favor of a cotenant or joint owner paying special assessments. — Any one of several tenants in common or joint tenants (other than copartners) may pay the whole or any part of a special assessment made against property held in common or jointly. Any amount so paid that exceeds his share of the assessment and that was not paid through agreement with or on behalf of the other joint owners is a lien in his favor upon the shares of the other joint owners. This lien may be enforced in a proceeding for actual partition, a proceeding for partition and sale, or by any other appropriate judicial proceeding. This lien is not effective against an innocent purchaser for value until notice of the lien is filed in the office of the clerk of superior court in the county in which the land lies and indexed and docketed in the same manner as other liens required by law to be filed in that clerk's office. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-204. Apportionment of assessments. — If a special assessment has been made against property that has been or is about to be subdivided, the board of commissioners may, with the consent of the owner of the property, (i) apportion the assessment among the lots or tracts within the subdivision, or (ii) release certain lots or tracts from the assessment if, in the board's opinion, the released lots or tracts are not benefited by the project, or (iii) both. Upon an apportionment each of the lots or tracts in the subdivision is released from the lien of the original assessment, and the portion of the original assessment assessed against each lot or tract has, as to that lot or tract, the same force as the original assessment. At the time the board makes an apportionment under this section, the clerk shall enter on the minutes of the board the date, hour, and minute of apportionment and a statement to the effect that the apportionment is made with the consent of the owners of the property affected, which entry is conclusive in the absence of fraud. The apportionment is effective at the time shown in the minute book. Apportionments may include past due installments with interest, as well as installments not then due; and any installment not then due shall fall due at the same date as it would have under the original assessment. (1963, c. 985, s. 1; 1965, c. 714; 1973, c. 822, s. 1.)

§ 153A-205. Improvements to subdivision and residential streets. — (a) A county may finance the local share of the cost of improvements made under the supervision of the Department of Transportation to subdivision and residential streets that are a part of the State maintained system located in the county and outside of a city and shall levy and collect pursuant to the procedures of Article 9 of Chapter 153A of the General Statutes special assessments against benefited property to recoup that portion of the costs financed by the county. The local share is that share required by policies of the Secondary Roads Council, and may be paid by the county from funds not otherwise limited as to use by law. Land owned, leased, or controlled by a railroad company is exempt from such assessments to the same extent that it would be exempt from street assessments of a city under G.S. 160A-222. No project may be commenced under this section unless it has been approved by the Department of Transportation.

(b) A county may finance the local share of the cost of improvements made under the supervision of the Department of Transportation to subdivision and residential streets located in the county and outside of a city in order to bring those streets up to the standards of the Secondary Roads Council so that they may become a part of the State maintained system and shall levy and collect pursuant to the procedures of Article 9 of Chapter 153A of the General Statutes special assessments against benefited property to recoup that portion of the costs financed by the county. The local share is that share required by policies of the Secondary Roads Council, and may be paid by the county from funds not otherwise limited as to use by law. Land owned, leased, or controlled by a railroad company is exempt from such assessments to the same extent that it would be exempt from street assessments of a city under G.S. 160A-222. No project may be commenced under this section unless it has been approved by the Department of Transportation.

(c) Before a county may finance all or a portion of the cost of improvements to a subdivision or residential street, it must receive a petition for the improvements signed by at least seventy-five percent (75%) of the owners of property to be assessed, who must represent at least seventy-five percent (75%) of all the lineal feet of frontage of the lands abutting on the street or portion thereof to be improved. The petition shall state that portion of the cost of the improvement to be assessed, which shall be the local share required by policies of the Secondary Roads Council.

Property owned by the United States shall not be included in determining the lineal feet of frontage on the improvement, nor shall the United States be included in determining the number of owners of property abutting the improvement. Property owned by the State of North Carolina shall be included in determining frontage and the number of owners only if the State has consented to assessment as provided in G.S. 153A-189. Property owned, leased, or controlled by railroad companies shall be included in determining frontage and the number of owners to the extent the property is subject to assessment under G.S. 160A-222. Property owned, leased, or controlled by railroad companies that is not subject to assessment shall not be included in determining frontage or the number of owners.

No right of action or defense asserting the invalidity of street assessments on grounds that the county did not comply with this subsection in securing a valid petition may be asserted except in an action or proceeding begun within 90 days after the day of publication of the notice of adoption of the preliminary assessment resolution.

(d) This section is intended to provide a means of assisting in financing improvements to subdivision and residential streets that are on the State highway system or that will, as a result of the improvements, become a part of the system. By financing improvements under this section, a county does not thereby acquire or assume any responsibility for the street or streets involved, and a county has no liability arising from the construction of such an improvement or the maintenance of such a street. Nothing in this section shall be construed to alter the conditions and procedures under which State system streets or other public streets are transferred to municipal street systems pursuant to G.S. 136-66.1 and 136-66.2 upon annexation by, or incorporation of, a municipality. (1975, c. 487, s. 2; c. 716, s. 7.)

Editor's Note. — The 1975 amendment substituted "Department of Transportation" for "Department of Transportation and Highway Safety" in subsections (a) and (b).

§§ 153A-206 to 153A-210: Reserved for future codification purposes.

ARTICLE 10.

Law Enforcement and Confinement Facilities.

Part 1. Law Enforcement.

§ 153A-211. Training and development programs for law enforcement. —A county may plan and execute training and development programs for law-enforcement agencies, and for that purpose may:

(1) Contract with other counties, cities, and the State and federal governments and their agencies;

(2) Accept, receive, and disburse funds, grants, and services;

(3) Pursuant to the procedures and provisions of Chapter 160A, Article 20, Part 1, create joint agencies to act for and on behalf of the participating counties and cities;

(4) Apply for, receive, administer, and expend federal grant funds;

(5) Appropriate funds not otherwise limited as to use by law. (1969, c. 1145, s. 2; 1973, c. 822, s. 1.)

§ 153A-212. Cooperation on law-enforcement matters. — A county may cooperate with other local governments in law-enforcement matters, as permitted by G.S. 160A-283 (joint auxiliary police), by G.S. 160A-288 (emergency aid), and by Chapter 160A, Article 20, Part 1. (1973, c. 822, s. 1.)

§§ 153A-213 to 153A-215: Reserved for future codification purposes.

Part 2. Local Confinement Facilities.

§ 153A-216. Legislative policy. — The policy of the General Assembly with respect to local confinement facilities is:

(1) Local confinement facilities should provide secure custody of persons confined therein in order to protect the community and should be operated so as to protect the health and welfare of prisoners and provide for their humane treatment.

(2) Minimum statewide standards should be provided to guide and assist local governments in planning, constructing, and maintaining confinement facilities and in developing programs that provide for humane treatment of prisoners and contribute to the rehabilitation of offenders.

(3) The State should provide services to local governments to help improve the quality of administration in local confinement facilities. These services should include inspection, consultation, technical assistance, and other appropriate services.

(4) Adequate training of the personnel of local confinement facilities is essential to improvement of the quality of administration of those facilities. The State should provide this training and the training should be required as a condition of employment in a local confinement facility. (1967, c. 581, s. 2; 1973, c. 822, s. 1.)

§ 153A-217. Definitions. — Unless otherwise clearly required by the context, the words and phrases defined in this section have the meanings indicated when used in this Part:

(1) "Commission" means the Social Services Commission.

(2) "Secretary" means the Secretary of Human Resources.

(3) "Department" means the Department of Human Resources.

(4) "Governing body" means the governing body of a county or city or the policy-making body for a district or regional confinement facility.

(5) "Local confinement facility" includes a county or city jail, a local lockup, a regional or district jail, a juvenile detention home, a detention facility for adults operated by a local government, and any other facility operated by a local government for confinement of persons awaiting trial or serving sentences.

(6) "Prisoner" includes any person, adult or juvenile, confined or detained in a confinement facility.

(7) "Unit," "unit of local government," or "local government" means a county or city. (1967, c. 581, s. 2; 1969, c. 981, s. 1; 1973, c. 476, s. 138; c. 822, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 138, "Commission" has been substituted for "Board" and "Social Services Commission" has been substituted for "State Board of Social Services" in subdivision (1), "Secretary" has been substituted for "Commissioner" and "Secretary of Human Resources" has been substituted for "State Commissioner of Social Services" in subdivision (2), and "Department of Human Resources" has been substituted for "State Department of Social Services" in subdivision (3) of this section as enacted by Session Laws 1973, c. 822, s. 1.

§ 153A-218. County confinement facilities. — A county may establish, acquire, erect, repair, maintain, and operate local confinement facilities and may for these purposes appropriate funds not otherwise limited as to use by law. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; 1915, c. 140; C. S., s. 1297; 1973, c. 822, s. 1.)

Requirements for Prisoner's Comfort. — The least that is required is that persons confined in any public prison shall have a clean place, comfortable bedding, wholesome food and drink, and necessary attendance. Lewis v. City of Raleigh, 77 N.C. 229 (1877).

An action cannot be maintained against a county for damages sustained by one while imprisoned in the county jail by reason of the failure of the commissioners to provide adequate means for his health and protection. Manuel v. Board of Comm'rs, 98 N.C. 9, 3 S.E. 829 (1887).

Liability for Nuisance in Erection and Maintenance of Jail. — "A county is not liable for a nuisance to a citizen in the erection of a jail in the immediate vicinity of his residence, nor for suffering it to become so filthy and disorderly as to be a nuisance to him and his family." The doctrine is that while these corporate agencies must provide the means and employ the men to perform such duties, they are not personally and by their own labor to perform such menial services; and the default to make them liable must be in neglecting to exercise their authority in the use of labor and money for that purpose, and so must it be charged to make a cause of action against them. Threadgill v. Board of Comm'rs, 99 N.C. 352, 6 S.E. 189 (1888).

Liability for Failure to Make Regulations for Safety of Prisoners. — The duty to make proper rules and regulations imposes a discretionary duty on the board of commissioners exercisable only in its corporate capacity, and the commissioners are not liable as individuals for failure to make regulations for the safety of prisoners unless they corruptly or with malice fail to make proper rules and regulations. Moye v. McLawhorn, 208 N.C. 812, 182 S.E. 493 (1935).

§ 153A-219. District confinement facilities. — (a) Two or more units of local government may enter into and carry out an agreement to establish, finance, and operate a district confinement facility. The units may construct such a facility or may designate an existing facility as a district confinement facility. In addition, two or more units of local government may enter into and carry out agreements under which one unit may use the local confinement facility owned and operated by another. In exercising the powers granted by this section, the units shall proceed according to the procedures and provisions of Chapter 160A, Article 20, Part 1.

(b) If a district confinement facility is established, the units involved shall provide for a jail administrator for the facility. The administrator need not be the sheriff or any other official of a participating unit. The administrator and the other custodial personnel of a district confinement facility have the authority of law-enforcement officers for the purposes of receiving, maintaining custody of, and transporting prisoners.

(c) If a district confinement facility is established, or if one unit contracts to use the local confinement facility of another, the law-enforcement officers of the contracting units and the custodial personnel of the facility may transport prisoners to and from the facility.

(d) The Department shall provide technical and other assistance to units wishing to exercise any of the powers granted by this section. (1933, c. 201; 1967, c. 581, s. 2; 1969, c. 743; 1971, c. 341, s. 1; 1973, c. 822, s. 1.)

§ 153A-220. Jail and detention services. — The Commission has policy responsibility for providing and coordinating State services to local government with respect to local confinement facilities. The Department shall:

(1) Consult with and provide technical assistance to units of local government with respect to local confinement facilities.
(2) Develop minimum standards for the construction and operation of local confinement facilities.
(3) Visit and inspect local confinement facilities; advise the sheriff, jailer, governing board, and other appropriate officials as to deficiencies and recommend improvements; and submit written reports on the inspections to appropriate local officials.
(4) Review and approve plans for the construction and major modification of local confinement facilities.
(5) Provide for training of personnel of local confinement facilities.

(6) Perform any other duties that may be necessary to carry out the State's responsibilities concerning local confinement facilities. (1967, c. 581, s. 2; 1973, c. 476, s. 138; c. 822, s. 1.)

Cross Reference. — As to juvenile detention services, see § 134A-36 et seq.

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 138, "Commission" has been substituted for "Board" in the introductory paragraph of this section as enacted by Session Laws 1973, c. 822, s. 1.

§ 153A-221. Minimum standards. — (a) The Secretary shall develop and publish minimum standards for the operation of local confinement facilities and may from time to time develop and publish amendments to the standards. The standards shall be developed with a view to providing secure custody of prisoners and to protecting their health and welfare and providing for their humane treatment. The standards shall provide for:

(1) Secure and safe physical facilities;
(2) Jail design;
(3) Adequacy of space per prisoner;
(4) Heat, light, and ventilation;
(5) Supervision of prisoners;
(6) Personal hygiene and comfort of prisoners;
(7) Medical care for prisoners;
(8) Sanitation;
(9) Food allowances, food preparation, and food handling;
(10) Any other provisions that may be necessary for the safekeeping, privacy, care, protection, and welfare of prisoners.

(b) In developing the standards and any amendments thereto, the Secretary shall consult with organizations representing local government and local law enforcement, including the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the North Carolina Sheriffs' Association, and the North Carolina Police Executives' Association. The Secretary shall also consult with interested State departments and agencies, including the State Department of Social Rehabilitation and Control, the Department of Human Resources, and the Department of Insurance.

(c) Before the standards or any amendments thereto may become effective, they must be approved by the Commission and the Governor. Upon becoming effective, they have the force and effect of law. (1967, c. 581, s. 2; 1973, c. 476, ss. 128, 133, 138; c. 822, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, ss. 128, 133 and 138, "Secretary" has been substituted for "Commissioner" in subsections (a) and (b), "Department of Human Resources" has been substituted for "State Board of Health, the State Department of Mental Health" in subsection (b), and "Commission" has been substituted for "Board" in subsection (c) of this section as enacted by Session Laws 1973, c. 822, s. 1.

Applied in State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975).

§ 153A-221.1. Standards and inspections. — The legal responsibility of the Secretary of Human Resources and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training. Further, the legal responsibility of the Department of Human Resources is hereby expanded to give said Department the same legal responsibility as to the state-administered regional detention homes which shall be developed by the State Department of Correction as provided by G.S. 134-37.

The Secretary of Human Resources shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by G.S. 134-36 in line with the recommendations of the report entitled *Juvenile Detention in North Carolina: A Study Report* (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.

The Secretary of Human Resources shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child. (1973, c. 1230, s. 2; c. 1262, s. 10; 1975, c. 426, s. 2.)

Editor's Note. — The 1975 amendment substituted "five calendar days" for "72 hours" near the beginning of the first sentence of the last paragraph.

§ 153A-222. Inspections of local confinement facilities. — Department personnel shall visit and inspect each local confinement facility at least semiannually. The purpose of the inspections is to investigate the conditions of confinement and treatment of prisoners and to determine whether the facility meets the minimum standards published pursuant to G.S. 153A-221. The inspector shall make a written report of each inspection and submit it within 30 days after the day the inspection is completed to the governing body and other local officials responsible for the facility. The report shall specify each way in which the facility does not meet the minimum standards. The governing body shall consider the report at its first regular meeting after receipt of the report and shall promptly initiate any action necessary to bring the facility into conformity with the standards. (1947, c. 915; 1967, c. 581, s. 2; 1973, c. 822, s. 1.)

§ 153A-223. Enforcement of minimum standards. — If an inspection conducted pursuant to G.S. 153A-222 discloses that a local confinement facility does not meet the minimum standards published pursuant to G.S. 153A-221 and, in addition, if the Secretary determines that conditions in the facility jeopardize the safe custody, safety, health, or welfare of persons confined in the facility, the Secretary may order corrective action or close the facility, as provided in this section:

(1) The Secretary shall give notice of his determination to the governing body and each other local official responsible for the facility. The Secretary shall also send a copy of this notice, along with a copy of the inspector's report, to the senior regular resident superior court judge for the judicial district in which the facility is located. Upon receipt of the Secretary's notice, the governing body shall call a public hearing to consider the report. The hearing shall be held within 20 days after the day the Secretary's notice is received. The inspector shall appear at this hearing to advise and consult with the governing body concerning any corrective action necessary to bring the facility into conformity with the standards.

(2) The governing body shall, within 30 days after the day the Secretary's notice is received, initiate appropriate corrective action or close the facility. The corrective action must be completed within a reasonable time.

(3) If the governing body does not within the 30-day period either initiate corrective action or close the facility, or does not complete the action

within a reasonable time, the Secretary may order that the facility be closed. The Secretary shall by registered mail give notice of his order of closure to the governing body and each other local official responsible for the facility and to the senior regular resident superior court judge. The order shall provide for its effective date.

(4) The governing body may appeal an order of the Secretary to the senior regular resident superior court judge. The governing body shall initiate the appeal by giving by registered mail to the judge and to the Secretary notice of its intention to appeal. The notice must be given within 15 days after the day the Secretary's order is received. If notice is not given within the 15-day period, the right to appeal is terminated.

(5) The senior regular resident superior court judge shall hear the appeal. He shall cause notice of the date, time, and place of the hearing to be given to each interested party, including the Secretary, the governing body, and each other local official involved. The judge shall conduct the hearing without a jury. The Secretary, the governing body, and each other local official may give any evidence the judge finds appropriate. The issue before the court shall be whether the facility continues to jeopardize the safe custody, safety, health, or welfare of persons confined therein. The court may affirm, modify, or reverse the Secretary's order. (1947, c. 915; 1967, c. 581, s. 2; 1973, c. 476, s. 138; c. 822, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 138, "Secretary" has been substituted for "Commissioner" and "Secretary's" has been substituted for "Commissioner's" throughout this section as enacted by Session Laws 1973, c. 822.

§ 153A-224. Supervision of local confinement facilities. — (a) No person may be confined in a local confinement facility unless custodial personnel are present and available to provide continuous supervision in order that custody will be secure and that, in event of emergency, such as fire, illness, assaults by other prisoners, or otherwise, the prisoners can be protected. These personnel shall supervise prisoners closely enough to maintain safe custody and control and to be at all times informed of the prisoners' general health and emergency medical needs.

(b) In a medical emergency, the custodial personnel shall secure emergency medical care from a licensed physician according to the unit's plan for medical care. If a physician designated in the plan is not available, the personnel shall secure medical services from any licensed physician who is available. The unit operating the facility shall pay the cost of emergency medical services.

(c) If a person violates any provision of this section, he is guilty of a misdemeanor. (1967, c. 581, s. 2; 1973, c. 822, s. 1.)

§ 153A-225. Medical care of prisoners. — (a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;

(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;

(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health director, upon a determination that the plan is adequate to protect the health and welfare of the prisoners, and must be adopted by the governing body.

(b) If a prisoner in a local confinement facility dies, the medical examiner and the coroner shall be notified immediately. Within five days after the day of the death, the administrator of the facility shall make a written report to the local or district health director and to the Secretary of Human Resources. The report shall be made on forms provided by the [State Board of Health, and the Board of Health] shall develop and distribute these forms.

(c) If a person violates any provision of this section (including the requirements regarding G.S. 130-97 and 130-121), he is guilty of a misdemeanor. (1967, c. 581, s. 2; 1973, c. 476, ss. 128, 138; c. 822, s. 1; 1973, c. 1140, s. 3.)

Editor's Note. — Pursuant to the Executive Organization Act of 1973, Session Laws 1973, c. 476, s. 138, "Secretary of Human Resources" has been substituted for "Commissioner" at the end of the second sentence of subsection (b) of this section as enacted by Session Laws 1973, c. 822. In the last sentence of subsection (b), the words "State Board of Health, and the Board of Health" have been retained, in brackets, because the 1973 act is unclear whether the Department of Human Resources and/or the Commission for Health Services shall provide, develop and/or distribute the forms.

Liability of County for Emergency Medical Services. — Where a sheriff in an emergency requested a physician to render services to a prisoner in his custody who had been badly wounded resisting arrest, and there was evidence tending to show that under the circumstances he could not have obtained in time an order from the board of county commissioners that would assume responsibility on behalf of the county to pay them, the objection of the commissioners that under such circumstances the county would not pay for them, and the liability would only attach as to those prisoners delivered at the county jail, is untenable. Spicer v. Williamson, 191 N.C. 487, 132 S.E. 291 (1926).

Applied in State ex rel. Williams v. Adams, 288 N.C. 501, 219 S.E.2d 198 (1975).

§ 153A-225.1. Duty of custodial personnel when prisoners are unconscious or semiconscious. — (a) Whenever a custodial officer of a local confinement facility takes custody of a prisoner who is unconscious, semiconscious, or otherwise apparently suffering from some disabling condition and unable to provide information on the causes of the condition, the officer should make a reasonable effort to determine if the prisoner is wearing a bracelet or necklace containing the Medic Alert Foundation's emergency alert symbol to indicate that the prisoner suffers from diabetes, epilepsy, a cardiac condition or any other form of illness which would cause a loss of consciousness. If such a symbol is found indicating that the prisoner suffers from one of those conditions, the officer must make a reasonable effort to have appropriate medical care provided.

(b) Failure of a custodial officer of a local confinement facility to make a reasonable effort to discover an emergency alert symbol as required by this section does not by itself establish negligence of the officer but may be considered along with other evidence to determine if the officer took reasonable precautions to ascertain the emergency medical needs of the prisoner in his custody.

(c) A prisoner who is provided medical care under the provisions of this section is liable for the reasonable costs of that care unless he is indigent.

(d) Repealed by Session Laws 1975, c. 818, s. 2. (1975, c. 306, s. 2; c. 818, s. 2.)

Editor's Note. — The 1975 amendment repealed subsection (d), which stated: "Willful false representation of the existence of diabetes, epilepsy, a cardiac condition, or other disabling condition covered by this section, is punishable as provided in G.S. 14-223.1."

§ 153A-226. Sanitation and food. — (a) The Commission for Health Services shall adopt rules and regulations governing the sanitation of local confinement facilities, including the kitchens and other places where food is prepared for prisoners. The rules and regulations shall cover such matters as cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of lighting, ventilation, water, lavatory facilities, bedding, food protection facilities, treatment of eating and drinking utensils, and waste disposal; methods of food preparation, handling, storage, and serving; adequacy of diet; and any other item necessary to the health of the prisoners or the public.

(b) The [Commission for Health Services] shall prepare a score sheet to be used by sanitarians of local or district health departments in inspecting local confinement facilities. The sanitarians shall inspect local confinement facilities as often as may be required by the Commission for Health Services. If an inspector of the Department finds conditions that reflect hazards or deficiencies in the sanitation or food service of a local confinement facility, he shall immediately notify the local or district health department. The health department shall promptly cause a sanitarian to inspect the facility. After making his inspection, the sanitarian shall forward a copy of his report to the Department and to the unit operating the facility, on forms prepared by the [Department]. The report shall indicate whether the facility and its kitchen or other place for preparing food is approved or disapproved for public health purposes. If the facility is disapproved, the situation shall be rectified according to the procedures of G.S. 153A-223. (1967, c. 581, s. 2; 1973, c. 476, s. 128; c. 822, s. 1.)

Editor's Note. — Pursuant to the Executive Organization Act of 1973, Session Laws 1973, c. 476, s. 128, "Commission for Health Services" has been substituted for "State Board of Health" in the first sentence of subsection (a) and in the first and second sentences of subsection (b), and "Department" has been substituted for "State Board of Health" at the end of the fifth sentence of subsection (b) of this section as enacted by Session Laws 1973, c. 822, s. 1. In the first and fifth sentences of subsection (b), the substitutions have been made in brackets, because the intention of the 1973 act as to the duties imposed by these two sentences is unclear.

§ 153A-227. Training of personnel. — (a) The Secretary shall provide for a training program for supervisory and administrative personnel of local confinement facilities. These personnel include the sheriff and other elected or appointed officials. The Secretary shall develop the training program in consultation with the State Department of Social Rehabilitation and Control, the North Carolina Sheriffs' Association, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, and the North Carolina Police Executives' Association. To the extent feasible, the training should be provided through the existing educational resources of the State.

(b) Except on a temporary or probationary basis, no person (including elected officials) may serve as jailer or administrator of a local confinement facility unless he has successfully completed an approved program of training established pursuant to subsection (a) of this section. No person may serve on a temporary or probationary basis for longer than one year. (1967, c. 581, s. 2; 1973, c. 476, s. 138; c. 822, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 138, "Secretary" has been substituted for "Commissioner" in this section as enacted by Session Laws 1973, c. 822.

No Portion of This Statute Is Repealed by the 1971 Legislation Creating the Criminal Justice Training Standards Council. — See opinion of Attorney General to Mr. Woodburn C. Williams, Chief, Jail and Detention Services, N.C. Department of Social Services, 41 N.C.A.G. 603 (1971).

§ 153A-228. Separation of sexes. — Male and female prisoners shall be confined in separate facilities or in separate quarters in local confinement facilities. (1967, c. 581, s. 2; 1973, c. 822, s. 1.)

§ 153A-229. Jailer's report of jailed defendants. — A person having administrative control of a local confinement facility each week must file a report with the clerk of court listing the name and period of confinement of each person confined in that facility on Friday noon preceding submission of the report. (1973, c. 1286, s. 23.)

Editor's Note. — Session Laws 1973, c. 1286, s. 31, provides:

"Sec. 31. This act becomes effective on July 1, 1975, and is applicable to all criminal proceedings begun on and after that date and each provision is applicable to criminal proceedings pending on that date to the extent practicable, except § 12 [§§ 15-176.3 through 15-176.5] of this act which becomes effective on July 1, 1974."

Session Laws 1975, c. 573, amends Session Laws 1973, c. 1286, s. 31, so as to make the 1973 act effective Sept. 1, 1975, rather than July 1, 1975.

§§ 153A-230 to 153A-232: Reserved for future codification purposes.

Article 11.

Fire Protection.

§ 153A-233. Fire-fighting and prevention services. — A county may establish, organize, equip, support, and maintain a fire department; may prescribe the duties of the fire department; may provide financial assistance to incorporated volunteer fire departments; may contract for fire-fighting or prevention services with one or more counties, cities, or other units of local government or with an agency of the State government, or with one or more incorporated volunteer fire departments; and may for these purposes appropriate funds not otherwise limited as to use by law. The county may also designate fire districts or parts of existing districts and prescribe the boundaries thereof for insurance grading purposes. (1945, c. 244; 1973, c. 822, s. 1; 1977, c. 158.)

Editor's Note. — The 1977 amendment inserted "financial" and "or with one or more incorporated volunteer fire departments" in the first sentence and added the second sentence.

§ 153A-234. Fire marshal. — A county may appoint a fire marshal and employ persons as his assistants. A county may also impose any duty that might be imposed on a fire marshal on any other officer or employee of the county. The board of commissioners shall set the duties of the fire marshal, which may include but are not limited to:

(1) Advising the board on improvements in the fire-fighting or fire prevention activities under the county's supervision or control.

(2) Coordinating fire-fighting and training activities under the county's supervision or control.

(3) Coordinating fire prevention activities under the county's supervision or control.

(4) Assisting incorporated volunteer fire departments in developing and improving their fire-fighting or fire prevention capabilities.

(5) Making fire prevention inspections, including the periodic inspections and reports of school buildings required by Chapter 115 and the inspections of day-care facilities required by Chapter 110. A fire marshal shall not make electrical inspections unless he is qualified to

do so under G.S. 153A-351. (1959, c. 290; 1969, c. 1064, s. 2; 1973, c. 822, s. 1.)

§ 153A-235. Fire prevention codes. — A county may by ordinance adopt a fire prevention code, to be effective in all areas of the county not governed by a city fire prevention code. Any published technical code or any standard or regulation promulgated by a public agency may be adopted in the ordinance by reference, and a technical code or standard or regulation so adopted has the force of law in each area of the county in which the ordinance is effective. An official copy of a technical code or standard or regulation adopted by reference shall be available for public inspection in the clerk's office. Before a fire prevention code may be adopted, it must be submitted to and approved by the State Building Code Council.

A county that adopts a fire prevention code shall appoint one or more fire prevention inspectors or designate one or more other county officers or employees to perform the duties of fire prevention inspector. The board of commissioners shall, subject to the approval of the State Building Code Council, set the duties of any person appointed or designated as a fire prevention inspector. A fire prevention inspector shall not make electrical inspections unless he is qualified to do so under G.S. 153A-351. (1965, c. 626; 1969, c. 1064, s. 3; 1973, c. 822, s. 1.)

§§ 153A-236 to 153A-238: Reserved for future codification purposes.

Article 12.

Roads and Bridges.

§ 153A-239. Public road defined. — In this Article "public road" or "road" means any road, street, highway, thoroughfare, or other way of passage that has been irrevocably dedicated to the public or in which the public has acquired rights by prescription, without regard to whether it is open for travel. (1973, c. 822, s. 1.)

§ 153A-240. Naming roads and assigning street numbers in unincorporated areas. — A county may by ordinance name or rename any public road within the county and not within a city, and may assign or reassign street numbers for use on such a road. In naming or renaming a public road, a county may not

(1) Change the name, if any, given to the road by the Board of Transportation, unless the Board of Transportation agrees;
(2) Change the number assigned to the road by the Board of Transportation, but may give the road a name in addition to its number; or
(3) Give the road a name that is deceptively similar to the name of any other public road in the vicinity.

A county shall not name or rename a road or assign or reassign street numbers on a road until it has held a public hearing on the matter. At least 10 days before the day of the hearing, the board of commissioners shall cause notice of the time, place, and subject matter of the hearing to be prominently posted in at least three places along the road involved. After naming or renaming a public road, or assigning or reassigning street numbers on a public road, a county shall cause notice of its action to be given to the local postmaster with jurisdiction over the road, to the Board of Transportation, and to any city within five miles of the road.

This section does not repeal or modify Chapter 945 of the Session Laws of 1953, which pertains to naming streets in Kannapolis. (1957, c. 1068; 1973, c. 507, s. 5; c. 822, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 507, s. 5, "Board of Transportation" has been substituted for "State Highway Commission" and for "Commission" in this section as enacted by Session Laws 1973, c. 822.

§ 153A-241. Closing public roads or easements. — A county may permanently close any public road or any easement within the county and not within a city, except public roads or easements for public roads under the control and supervision of the Department of Transportation. The board of commissioners shall first adopt a resolution declaring its intent to close the public road or easement and calling a public hearing on the question. The board shall cause the resolution to be published once a week for four successive weeks before the hearing, a copy of the resolution to be sent by registered or certified mail to each owner as shown on the county tax records of property adjoining the public road or easement who did not join in the request to have the road or easement closed, and a notice of the closing and public hearing to be prominently posted in at least two places along the road or easement. At the hearing the board shall hear all interested persons who appear with respect to whether the closing would be detrimental to the public interest or to any individual property rights. If, after the hearing, the board of commissioners is satisfied that closing the public road or easement is not contrary to the public interest and (in the case of a road) that no individual owning property in the vicinity of the road or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the board may adopt an order closing the road or easement. A certified copy of the order (or judgment of the court) shall be filed in the office of the register of deeds of the county.

Any person aggrieved by the closing of a public road or an easement may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day the order is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to order the road or easement closed upon proper findings of fact by the trier of fact.

No cause of action founded upon the invalidity of a proceeding taken in closing a public road or an easement may be asserted except in an action or proceeding begun within 30 days after the day the order is adopted.

Upon the closing of a public road or an easement pursuant to this section, all right, title, and interest in the right-of-way is vested in those persons owning lots or parcels of land adjacent to the road or easement, and the title of each adjoining landowner, for the width of his abutting land, extends to the center line of the public road or easement. However, the right, title or interest vested in an adjoining landowner by this paragraph remains subject to any public utility use or facility located on, over, or under the road or easement immediately before its closing, until the landowner or any successor thereto pays to the utility involved the reasonable cost of removing and relocating the facility. (1949, c. 1208, ss. 1-3; 1957, c. 65, s. 11; 1965, cc. 665, 801; 1971, c. 595; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34.)

Editor's Note. — Pursuant to Session Laws 1973, c. 507, s. 5, "Board of Transportation" has been substituted for "State Highway Commission" in this section as enacted by Session Laws 1973, c. 822.

The 1977 amendment substituted "Department of Transportation" for "Board of Transportation" in the first sentence.

For a note discussing the disposition of property within the boundaries of a dedicated street when use of the street is discontinued, see 45 N.C.L. Rev. 564 (1967).

Legislative Intent as to Closing Streets by Municipalities. — The true legislative intent is that if a municipality wishes to close a street, or a part thereof, the notices required must be given. Such an intent is fair and just, because it affords all interested parties an opportunity to be heard. In re City of Washington, 15 N.C. App. 505, 190 S.E.2d 309 (1972).

Notice to Owners of Property Adjoining Street to Be Closed Not Limited to Those with Special Interest. — The statute requires notice by registered mail to the owners of property adjoining the street to be closed who did not join in the request for closing the street. The words of the statute are clear and unequivocal. There is nothing to indicate that only those with a "special interest" must be notified by registered mail. In re City of Washington, 15 N.C. App. 505, 190 S.E.2d 309 (1972).

Owners of Property on Street to Be Partially Closed. — Owners of property on a street which is to be partially closed have an interest in the hearing on the request to close the street. In re City of Washington, 15 N.C. App. 505, 190 S.E.2d 309 (1972).

The closing of a street must not deprive a property owner of reasonable ingress or egress. Wofford v. North Carolina State Hwy. Comm'n, 263 N.C. 677, 140 S.E.2d 376, cert. denied, 382 U.S. 822, 86 S. Ct. 50, 15 L. Ed. 2d 67 (1965).

An individual may restrain the wrongful obstruction of a public way, of whatever origin, if he will suffer injury thereby as distinct from the inconvenience to the public generally, and he may recover such special damages as he has sustained by reason of the obstruction. Wofford v. North Carolina State Hwy. Comm'n, 263 N.C. 677, 140 S.E.2d 376, cert. denied, 382 U.S. 822, 86 S. Ct. 50, 15 L. Ed. 2d 67 (1965).

§ 153A-242. Regulation or prohibition of fishing from bridges. — A county may by ordinance regulate or prohibit fishing from any bridge within the county and not within a city. In addition, the governing board of a city may by resolution permit a county to regulate or prohibit fishing from any bridge within the city. The city may by resolution withdraw its permission to the county ordinance. If it does so, the city shall give written notice to the county of its withdrawal of permission; 30 days after the date the county receives this notice the county ordinance ceases to be applicable within the city. An ordinance adopted pursuant to this section shall provide for signs to be posted on each bridge affected, summarizing the regulation or prohibition pertaining to that bridge.

No person may fish from the drawspan of a regularly attended bridge, and no county may permit any person to do so.

The authority granted by this section is subject to the authority of the Department of Transportation to prohibit fishing from any bridge on the State highway system. (1971, c. 690, ss. 1, 6; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34.)

Editor's Note. — Pursuant to Session Laws 1973, c. 507, s. 5, "Board of Transportation" has been substituted for "State Highway Commission" in this section as enacted by Session Laws 1973, c. 822.

The 1977 amendment substituted "Department of Transportation" for "Board of Transportation" in the last paragraph.

§ 153A-243. Authorizing bridges over navigable waters. — A county may grant to persons who between them own or occupy real property on both sides of a body of navigable water lying wholly within the county the right to construct and maintain across the body of water a bridge connecting the property. The board of commissioners shall first adopt a resolution declaring its intent to grant the right and calling a public hearing on the question. The board shall cause the resolution to be published once a week for four successive weeks before the hearing. At the hearing the board shall hear all interested persons who appear with respect to whether the grant would be in the public interest. If, after the hearing, the board finds that the grant is not contrary to the public interest, it may adopt an order granting the right to construct the bridge. The board may place reasonable terms and conditions, including time limitations, on the grant.

A person aggrieved by a grant may appeal the board of commissioners' order to the appropriate division of the General Court of Justice within 30 days after the day it is adopted. The court shall hear the matter de novo and has jurisdiction to try the issues arising and to grant the right to construct the bridge.

Before construction may be commenced on any bridge authorized pursuant to this section, the bridge's location and plans must be submitted to and approved by the Chief of Engineers of the United States Army and the Secretary of the Army. (Pub. Loc. 1191, c. 227; C. S., s. 1297; 1973, c. 822, s. 1.)

§§ 153A-244 to 153A-246: Reserved for future codification purposes.

ARTICLE 13.

Health and Social Services.

Part 1. Health Services.

§ 153A-247. Provision for public health and mental health. — A county may provide for and regulate the public health pursuant to Chapter 130 and any other law authorizing local public health activities and may provide mental health programs pursuant to Chapter 122. (1973, c. 822, s. 1.)

Summary of Powers Granted. — In reference to the powers conferred by law upon boards of county commissioners, they can establish public hospitals for their several counties in cases of necessity, and make rules, regulations and bylaws for preventing the spread of contagious and infectious diseases and for taking care of those afflicted thereby — the same not being inconsistent with the laws of the State. Prichard v. Board of Comm'rs, 126 N.C. 908, 36 S.E. 353 (1900).

Commissioners Cannot Burn Infected Residence. — A board of county commissioners cannot burn a residence-house to prevent the spread of contagious and infectious diseases. A proper disinfection would be the extent of their powers in respect to property thus tainted or infected. Prichard v. Board of Comm'rs, 126 N.C. 908, 36 S.E. 353 (1900).

§ 153A-248. Health-related appropriations. — (a) A county may appropriate revenues not otherwise limited as to use by law:

(1) To a licensed facility for the mentally retarded, whether publicly or privately owned, to assist in maintaining and developing facilities and treatment, if the board of commissioners determines that the care offered by the facility is available to residents of the county. The facility need not be located within the county.

(2) To a sheltered workshop or other private, nonprofit, charitable organization offering work or training activities to the physically or mentally handicapped, and may otherwise assist such an organization.

(3) To an orthopedic hospital, whether publicly or privately owned, to assist in maintaining and developing facilities and treatment, if the board of commissioners determines that the care offered by the hospital is available to residents of the county. The hospital need not be located within the county.

(b) The ordinance making the appropriation shall state specifically what the appropriation is to be used for, and the board of commissioners shall require that the recipient account for the appropriation at the close of the fiscal year. (1967, cc. 464, 1074; 1969, c. 802; 1973, c. 822, s. 1; 1977, c. 474.)

Editor's Note. — The 1977 amendment substituted "work or training activities" for "work and training activities" in subdivision (2) of subsection (a).

§ 153A-249. Hospital services. — A county may provide and support hospital services pursuant to Chapter 131. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1923, c. 81; 1973, c. 822, s. 1.)

County commissioners are not liable for failure to establish hospitals. Bell v. Commissioners of Johnston County, 127 N.C. 85, 37 S.E. 136 (1900).

Duty of County to Pay for Hospitalization of Prisoner in County Jail. — See opinion of Attorney General to Mr. Charles W. Ogletree, Tyrrell County Attorney, 40 N.C.A.G. 352 (1970).

Contracting Hospital Not a State Agency Subject to Federal Interdiction. — Funds paid to a memorial hospital by a city and county under contract did not make the hospital a State agency and hence subject to federal interdiction. Eaton v. Board of Managers of James Walker Mem. Hosp., 261 F.2d 521 (4th Cir. 1958); cert. denied, 359 U.S. 984, 79 S. Ct. 941, 3 L. Ed. 2d 934 (1959).

§ 153A-250. Ambulance services. — (a) A county may by ordinance franchise ambulance services provided in the county to the public at large, whether the service is based inside or outside the county. The ordinance may:

(1) Grant franchises to ambulance operators on terms set by the board of commissioners;
(2) Make it unlawful to provide ambulance services or to operate an ambulance in the county without such a franchise;
(3) Limit the number of ambulances that may be operated within the county;
(4) Limit the number of ambulances that may be operated by each franchised operator;
(5) Determine the areas of the county that may be served by each franchised operator;
(6) Establish and from time to time revise a schedule of rates, fees, and charges that may be charged by franchised operators;
(7) Set minimum limits of liability insurance for each franchised operator;
(8) Establish other necessary regulations consistent with and supplementary to any statute or any Department of Human Resources regulation relating to ambulance services.

Before it may adopt an ordinance pursuant to this subsection, the board of commissioners must first hold a public hearing on the need for ambulance services. The board shall cause notice of the hearing to be published once a week for two successive weeks before the hearing. After the hearing the board may adopt an ordinance if it finds that to do so is necessary to assure the provision of adequate and continuing ambulance service and to preserve, protect, and promote the public health, safety, and welfare.

If a person, firm, or corporation is providing ambulance services in a county or any portion thereof on the effective date of an ordinance adopted pursuant to this subsection, the person, firm, or corporation is entitled to a franchise to continue to serve that part of the county in which the service is being provided. The board of commissioners shall determine whether the person, firm, or corporation so entitled to a franchise is in compliance with Chapter 130, Article 26; and if that is the case, the board shall grant the franchise.

(b) In lieu of or in addition to adopting an ordinance pursuant to subsection (a) of this section, a county may operate or contract for ambulance services in all or a portion of the county. A county may appropriate for ambulance services any revenues not otherwise limited as to use by law, and may establish and from time to time revise schedules of rates, fees, charges, and penalties for the ambulance services. A county may operate its ambulance services as a line department or may create an ambulance commission and vest in it authority to operate the ambulance services.

(c) A city may adopt an ordinance pursuant to and under the procedures of subsection (a) of this section and may operate or contract for ambulance services pursuant to subsection (b) of this section if (i) the county in which the city is located has adopted a resolution authorizing the city to do so or (ii) the county has not, within 180 days after being requested by the city to do so, provided for ambulance services within the city pursuant to this section. Any action taken by a city pursuant to this subsection shall apply only within the corporate limits of the city.

If a city is exercising a power granted by this subsection, the county in which the city is located may thereafter take action to provide for ambulance service within the city, either under subsection (a) or subsection (b) of this section, only after having given to the city 180 days' notice of the county's intention to take action. At the end of the 180 days, the city's authority under this subsection is preempted by the county.

(d) A county or a city may contract with a franchised ambulance operator or with another county or city for ambulance service to be provided upon the call of a department or agency of the county or city. A county may contract with a franchised ambulance operator for transportation of indigents or persons certified by the county department of social services to be public assistance recipients.

(e) Each county or city operating ambulance services is subject to the provisions of Chapter 130, Article 26 ("Regulation of Ambulance Services"). (1967, c. 343, s. 5; 1969, c. 147; 1973, c. 476, s. 128; c. 822, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 128, "Department of Human Resources" has been substituted for "State Board of Health" in this section as enacted by Session Laws 1973, c. 822.

Opinions of Attorney General. — Mr. E. Ray Ethridge, Camden County Attorney, 40 N.C.A.G. 74 (1969).

The regulation of ambulance service is a valid and legitimate exercise of the police power. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

But Authority of County Cannot Exceed That Given by Enabling Act. — The authority of the county to regulate ambulance service — whether it be by franchise, permit, certificate of public convenience or necessity, license or whatever name is given — can only come from and cannot exceed that given by the enabling act. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

Contract with Funeral Home for Ambulance Services. — In the absence of a vote or of authority expressly granted by the legislature, a county may not legally contract with a funeral home for ambulance services, and its attempt to do so prior to the enactment of an enabling statute was ultra vires. Moody v. Transylvania County, 271 N.C. 384, 156 S.E.2d 716 (1967).

A County May, in Certain Cases, Provide Free Ambulance Service. — See opinion of Attorney General to Mr. Joe O. Brewer, 43 N.C.A.G. 157 (1973).

Subdivision (a)(7) Does Not Contravene Constitutional Prohibitions against Monopolies and Exclusive Emoluments. — Paragraph a6 of former § 153-9 (58), which was identical to subdivision (a)(7) of this section, was not void as being in contravention of constitutional prohibitions against monopolies and exclusive emoluments, since paragraph a6 did not provide that liability insurance should be the exclusive method of indemnifying persons or property against loss due to negligent operation of the ambulance service. Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

County Ordinance Regulating Ambulance Service Unconstitutional. — See Whaley v. Lenoir County, 5 N.C. App. 319, 168 S.E.2d 411 (1969).

§§ 153A-251 to 153A-254: Reserved for future codification purposes.

Part 2. Social Service Provisions.

§ 153A-255. Authority to provide social service programs. — Each county shall provide social service programs pursuant to Chapter 108 and Chapter 111 and may otherwise undertake, sponsor, organize, engage in, and support other social service programs intended to further the health, welfare, education, safety, comfort, and convenience of its citizens. (1868, c. 20, s. 8; Code, s. 707; Rev., s. 1318; C. S., s. 1297; 1973, c. 822, s. 1.)

Opinions of Attorney General. — Mr. Emmett L. Sellers, Director, Division of Medical Services, State Department of Social Services, 40 N.C.A.G. 704 (1969).

Ascertainment of Indigent Entitled to Support. — It is the exclusive right of the legislature to determine and declare by whom and how the indigent of the State entitled to support shall be ascertained, and from what fund and by whom allowances for their support shall be made. Board of Educ. v. Commissioners of Bladen, 113 N.C. 379, 18 S.E. 661 (1893).

The legislature may delegate authority to the county officials to provide and care for one class of the indigent or unfortunate inhabitants of the State, and to disburse a part of the fund devoted to the support of the poor, by appropriating it more directly to another class, whose wants, in the opinion of the lawmakers, can be best supplied through public agencies of a different kind. Board of Educ. v. Commissioners of Bladen, 113 N.C. 379, 18 S.E. 661 (1893).

No Recovery from County for Officiously Providing for Pauper. — Although a person may be a proper subject of county charge, anyone who officiously provides for such person cannot recover of the county the amount of his outlay. Copple v. Commissioners, 138 N.C. 127, 50 S.E. 574 (1905).

Express Contract or Express Request for Service Necessary to Bind County. — In order to make a binding pecuniary obligation on the county, there must be an express contract to that effect, or the service must be done at the express request of the proper county officer or agent. Copple v. Commissioners, 138 N.C. 127, 50 S.E. 574 (1905).

Contract Not Held Invalid Because of Duration. — Where the General Assembly has authorized a county to enter into a contract with a public hospital for the care of its indigent sick for a period of 30 years, and the board of commissioners of the county, in the exercise of the discretion vested in the board by the statute, has agreed to contract for that period, the contract will not be held invalid because of its duration. Martin v. Board of Comm'rs, 208 N.C. 354, 180 S.E. 777 (1935).

Loans for Care of Paupers Held Ultra Vires. — Contracts for the loan of money made by the late county courts for the support of the paupers in their respective counties were ultra vires, and therefore void. Daniel v. Board of Comm'rs, 74 N.C. 494 (1876).

§ 153A-256. County home. — A county may establish, erect, acquire, lease as lessor or lessee, equip, support, operate, and maintain a county home for aged and infirm persons and may appropriate funds for these purposes.

The superintendent of each county home shall make an annual report on its operation to the board of commissioners of the county operating the home and to the Department of Human Resources. The report shall contain any information that the board of commissioners and the Department of Human Resources, respectively, require, and the Department may provide forms for this report. (1876-7, c. 277, s. 3; Code, ss. 3541, 3543; 1891, c. 138; Rev., ss. 1328, 1329; 1919, c. 72; C. S., ss. 1336, 1337, 1338; 1961, c. 139, s. 1; 1973, c. 476, s. 138; c. 822, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 138, "Department of Human Resources" has been substituted for "State Department of Social Services" in this section as enacted by Session Laws 1973, c. 822.

The three-year statute of limitations applies to an action brought by a county against an inmate of county home to secure reimbursement or indemnity for sums expended for her upkeep in the home. Guilford County v. Hampton, 224 N.C. 817, 32 S.E.2d 606 (1945).

§ 153A-257. Legal residence for social service purposes. — (a) Legal residence in a county determines which county is responsible (i) for financial support of a needy person who meets the eligibility requirements for a public assistance or medical care program offered by the county or (ii) for other social services required by the person.

Legal residence in a county is determined as follows:

(1) Except as modified below, a person has legal residence in the county in which he resides.

(2) If a person is in a hospital, mental institution, nursing home, boarding home, confinement facility, or similar institution or facility, he does not, solely because of that fact, have legal residence in the county in which the institution or facility is located.

(3) A minor has the legal residence of the parent or other relative with whom he resides. If the minor does not reside with a parent or relative and is not in a foster home, hospital, mental institution, nursing home, boarding home, educational institution, confinement facility, or similar institution or facility, he has the legal residence of the person with whom he resides. Any other minor has the legal residence of his mother, or if her residence is not known then the legal residence of his father; if his mother's or father's residence is not known, the minor is a legal resident of the county in which he is found.

(b) A legal residence continues until a new one is acquired, either within or outside this State. When a new legal residence is acquired, all former legal residences terminate.

(c) This section is intended to replace the law defining "legal settlement." Therefore any general law or local act that refers to "legal settlement" is deemed to refer to this section and the rules contained herein. (1777, c. 117, s. 16, P. R.; R. C., c. 86, s. 12; Code, s. 3544; Rev., s. 1333; C. S., s. 1342; 1931, c. 120; 1943, c. 753, s. 2; 1959, c. 272; 1973, c. 822, s. 1.)

Each County Charged with Support of Its Poor. — It is the manifest purpose of the law in regard to pauper settlements to charge each county with the support of its own poor. Commissioners of County of Burke v. Commissioners of County of Buncombe, 101 N.C. 520, 8 S.E. 176 (1888).

Legal Settlement Determines Liability. — The legal settlement of the pauper determines the liability. Board of Comm'rs v. Board of Comm'rs, 121 N.C. 295, 28 S.E. 412 (1897).

Residence or Settlement Rather Than Domicile or Citizenship Governs. — The liability of a county for the support of a pauper does not depend upon the law of domicile or citizenship but upon that of residence or settlement. Commissioners of County of Burke v. Commissioners of County of Buncombe, 101 N.C. 520, 8 S.E. 176 (1888).

The law applicable to pauper settlements is regulated by statute, and is in no way governed by the law of the domicile or citizenship. Commissioners of County of Burke v. Commissioners of County of Buncombe, 101 N.C. 520, 8 S.E. 176 (1888).

When Domicile and Settlement Different. —Although in most cases the county of domicile and the county of settlement are the same, yet they are sometimes different and in such case the county of settlement is chargeable with the maintenance of a bastard child. State v. Elam, 61 N.C. 460 (1868).

Duration of Settlement. — A legal settlement continues until a new one is acquired. Board of Comm'rs v. Board of Comm'rs, 121 N.C. 295, 28 S.E. 412 (1897).

Settlement Not Ipso Facto Obtained by Birth. — Neither legitimate nor illegitimate children shall gain a settlement by birth in the county in which they may be born, if neither of their parents had any settlement therein. State v. Elam, 61 N.C. 460 (1868).

Liability for Bastard Child Fixed by Mother's Settlement. — The liability of the county for the maintenance of a bastard child is fixed not by its birth but by the settlement of its mother at the time of its birth. State v. Elam, 61 N.C. 460 (1868).

An illegitimate child, who has not gained a new settlement by a year's residence in some other county, is, for the purpose of being apprenticed, subject to the jurisdiction of the court of that county in which its mother was settled at the time of its birth. Ferrell v. Boykin, 61 N.C. 9 (1866).

When Mother of Bastard Child without Settlement. — A bastard, born in this State of a mother who had not resided in it for 12 months, as required by the statute then in effect, was chargeable for maintenance upon the county in which it was born. Since the statute did not contemplate the case of foreign paupers, the question of settlement was left as at common law. State ex rel. Merritt v. McQuaig, 63 N.C. 550 (1869).

Legal Settlement of Mental Incompetent for Welfare Payment Purposes. — See opinion of Attorney General to Mr. Joseph P.B. McCauley, Director, Gaston County Department of Social Services, 40 N.C.A.G. 678 (1970).

Daughter reaching majority and confined in institution retained settlement in county from which she came although her parent moved to another county while she was confined. Opinion of Attorney General to Mrs. Bing Lau, Social Worker, Murdoch Center, 41 N.C.A.G. 472 (1971).

Nursing Home Residence Not Sufficient for "Legal Settlement". — See opinion of Attorney General to Mr. Joe Freeman Britt, Robeson County Attorney, 41 N.C.A.G. 197 (1971).

Pauper Injured in Another County. — Where a pauper, temporarily absent from the county where he has a "legal settlement," was so disabled as to require immediate medical services and was furnished by the authorities of another county with such attention and board, the latter was entitled to recover the expenses thereof from the county where the pauper had his settlement. Board of Comm'rs v. Board of Comm'rs, 121 N.C. 295, 28 S.E. 412 (1897).

§§ 153A-258 to 153A-260: Reserved for future codification purposes.

ARTICLE 14.

Libraries.

§ 153A-261. Declaration of State policy. — The General Assembly recognizes that the availability of adequate, modern library services and facilities is in the general interest of the people of North Carolina and a proper concern of the State and of local governments. Therefore it is the policy of the State of North Carolina to promote the establishment and development of public library services throughout the State. (1973, c. 822, s. 1.)

The operation of a public library meets the test of "governmental function." Seibold v. Kinston-Lenoir County Pub. Library, 264 N.C. 360, 141 S.E.2d 519 (1965).

§ 153A-262. Library materials defined. — For purposes of this Article, the phrase "library materials" includes, without limitation, books, plates, pictures, engravings, maps, magazines, pamphlets, newspapers, manuscripts, films, transparencies, microforms, recordings, or other specimens, works of literature, or objects of art, historical significance, or curiosity. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3; 1973, c. 822, s. 1.)

§ 153A-263. Public library systems authorized. — A county or city may:

(1) Establish, operate, and support public library systems;

(2) Set apart lands and buildings for a public library system;

(3) Acquire real property for a public library system by gift, grant, purchase, lease, exercise of the power of eminent domain, or any other lawful method. If a library board of trustees is appointed, a county or city shall, before acquiring real property by purchase, lease, or exercise of the power of eminent domain, seek the recommendations of the board of trustees regarding the proposed acquisition;

(4) Provide, acquire, construct, equip, operate, and maintain buildings and other structures for a public library system;

(5) Acquire library materials by purchase, exchange, bequest, gift, or any other lawful method;

(6) Appropriate funds to carry out the provisions of this Article;

(7) Accept any gift, grant, lease, loan, exchange, bequest, or devise of real or personal property for a public library system. Devises, bequests, grants, and gifts may be accepted and held subject to any term or condition that may be imposed by the grantor or trustor, except that no county or city may accept or administer any term or condition that requires it to discriminate among its citizens on the basis of race, sex, or religion. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3; 1973, c. 822, s. 1.)

§ 153A-264. Free library services. — If a county or city, pursuant to this Article, operates or makes contributions to the support of a library, any resident of the county or city, as the case may be, is entitled to the free use of the library. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3; 1973, c. 822, s. 1.)

§ 153A-265. Library board of trustees. — The governing body of a county or city may appoint a library board of trustees. The governing body shall determine the number of members of the board of trustees (which may not be more than 12), the length of their terms, the manner of filling vacancies, and the amount, if any, of their compensation and allowances. The governing body may remove a trustee at any time for incapacity, unfitness, misconduct, or neglect of duty. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 1; 1973, c. 822, s. 1.)

§ 153A-266. Powers and duties of trustees. — If a board of trustees is appointed, it shall elect a chairman and may elect other officers. The governing body may delegate to the board of trustees any of the following powers:

(1) To formulate and adopt programs, policies, and regulations for the government of the library;
(2) To make recommendations to the governing body concerning the construction and improvement of buildings and other structures for the library system;
(3) To supervise and care for the facilities of the library system;
(4) To appoint a chief librarian or director of library services and, with his advice, to appoint other employees of the library system. If some other body or official is to appoint the chief librarian or director of library services, to advise that body or official concerning that appointment;
(5) To establish, a schedule of fines and charges for late return of, failure to return, damage to, and loss of library materials, and to take other measures to protect and regulate the use of such materials;
(6) To participate in preparing the annual budget of the library system;
(7) To extend the privileges and use of the library system to nonresidents of the county or city establishing or supporting the system, on any terms or conditions the board may prescribe.
(8) To otherwise advise the board of commissioners on library matters.

The board of trustees shall make an annual report on the operations of the library to the governing body of the county or city and shall make an annual report to the Department of Cultural Resources as required by G.S. 125-5. If no board of trustees is established, the governing body shall make the annual report to the Department. (1953, c. 721; 1963, c. 945; 1969, c. 488; 1971, c. 698, s. 3; 1973, c. 476, s. 84; c. 822, s. 1.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 84, "Department of Cultural Resources" has been substituted for "North Carolina State Library" and "Department" has been substituted for "State Library" in this section as enacted by Session Laws 1973, c. 822.

§ 153A-267. Qualifications of chief librarian; library employees. — (a) To be eligible for appointment and service as chief administrative officer of a library system (whether designated chief librarian, director of library services, or some other title), a person must have a professional librarian certificate issued by the Secretary of Cultural Resources, pursuant to G.S. 125-9, under regulations for certification of public librarian as established by the North Carolina Public Librarian Certification Commission pursuant to the provisions of G.S. 143B-67.

(b) The employees of a county or city library system are, for all purposes, employees of the county or city, as the case may be. (1953, c. 721; 1963, c. 945; 1969, c. 488; 1971, c. 698, s. 3; 1973, c. 476, s. 53; c. 822, s. 1; 1975, c. 516.)

Editor's Note. — Pursuant to Session Laws 1973, c. 476, s. 53, "Public Librarian Certification Commission" has been substituted for "North Carolina Library Certification Board" in this section as enacted by Session Laws 1973, c. 822.

The 1975 amendment substituted the language beginning "Secretary of Cultural Resources" and ending "G.S. 143B-67" for "the Public Librarian Certification Commission pursuant to the provisions of Chapter 125" at the end of subsection (a).

§ 153A-268. Financing library systems. — A county or city may appropriate for library purposes any funds not otherwise limited as to use by law. (1973, c. 822, s. 1.)

§ 153A-269. Title to library property. — The title to all property acquired by a county or city for library purposes shall be in the name of the county or city. If property is given, granted, devised, bequeathed, or otherwise conveyed to the board of trustees of a county or city library system, it shall be deemed to have been conveyed to the county or city and shall be held in the name of the county or city. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3; 1973, c. 822, s. 1.)

§ 153A-270. Joint libraries; contracts for library services. — Two or more counties or cities or counties and cities may establish a joint library system or contract for library services, according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1953, c. 721; 1963, c. 945; 1971, c. 698, s. 3; 1973, c. 822, s. 1.)

§ 153A-271. Library systems operated under local acts brought under this Article. — If a county or city operates a library system pursuant to a local act, the governing body of the county or city may by ordinance provide that the library system is to be operated pursuant to this Article. (1973, c. 822, s. 1.)

§§ 153A-272, 153A-273: Reserved for future codification purposes.

ARTICLE 15.

Public Enterprises.

Part 1. General Provisions.

§ 153A-274. Public enterprise defined. — As used in this Article, "public enterprise" includes:

(1) Water supply and distribution systems,
(2) Sewage collection and disposal systems,
(3) Solid waste collection and disposal systems and facilities,
(4) Airports,
(5) Off-street parking facilities,
(6) Public transportation systems. (1955, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1971, c. 568; 1973, c. 822, s. 1; c. 1214; 1977, c. 514, s. 1.)

Editor's Note. — The 1977 amendment rewrote subdivision (6), which formerly read "Bus lines and mass transit systems."

§ 153A-275. Authority to operate public enterprises. — A county may acquire, lease as lessor or lessee, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of public enterprises in order to furnish services to the county and its citizens. A county may acquire, construct, establish, enlarge, improve, maintain, own, and operate outside its borders any public enterprise.

A county may by ordinance or resolution adopt adequate and reasonable rules and regulations to protect and regulate a public enterprise belonging to or operated by it. (1955, c. 370; 1957, c. 266, s. 3; 1961, c. 514, s. 1; c. 1001, s. 1; 1967, c. 462; 1971, c. 568; 1973, c. 822, s. 1.)

Constitutionality of Former Statute. — Former § 153-9(46), was constitutional, violating neither § 5 nor § 17 of Art. I of the Constitution of 1868. Ramsey v. Rollins, 246 N.C. 647, 100 S.E.2d 55 (1957).

The limitation upon the counties contained in Art. VII, § 7, of the Constitution of 1868, requiring that bonds for the construction of water and sewer systems be approved by the voters in such county, did not impair the constitutionality of the grant of the power to construct such systems in any respect. Ramsey v. Rollins, 246 N.C. 647, 100 S.E.2d 55 (1957).

Authority for County to Appropriate Nontax Funds for Water and Sewer System. —See opinion of Attorney General to Mr. M. Alexander Biggs, Special Counsel, Nash County Board of Commissioners, 40 N.C.A.G. 92 (1970).

§ 153A-276. Financing public enterprises. — Subject to the restrictions, limitations, procedures, and regulations otherwise provided by law, a county may finance the cost of a public enterprise by levying taxes, borrowing money, and appropriating any other revenues, and by accepting and administering gifts and grants from any source. (1973, c. 822, s. 1.)

§ 153A-277. Authority to fix and enforce rates. — (a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by a public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of service, and different schedules may be adopted for services provided outside of the county.

(b) A county may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts. A county may also discontinue service to a customer whose account remains delinquent for more than 10 days. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises. If water or sewer services are discontinued for delinquency, it is unlawful for a person other than a duly authorized agent or employee of the county to reconnect the premises to the water or sewer system.

(c) Rents, rates, fees, charges, and penalties for enterprisory services are in no case a lien upon the property or premises served and, except as provided in subsection (d) of this section, are legal obligations of the person contracting for them.

(d) Rents, rates, fees, charges, and penalties for enterprisory services are legal obligations of the owner of the property or premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter; or

(2) Charges made for use of a sewerage system are billed separately from charges made for the use of a water distribution system. (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

§ 153A-278. Joint provision of enterprisory services. — Two or more counties, cities, or other units of local government may cooperate in the exercise of any power granted by this Article according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

§§ 153A-279 to 153A-282: Reserved for future codification purposes.

Part 2. Special Provisions for Water and Sewer Services.

§ 153A-283. Nonliability for failure to furnish water or sewer services. —In no case may a county be held liable for damages for failure to furnish water or sewer services. (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

§ 153A-284. Power to require connections. — A county may require the owner of improved property located so as to be served by a water line or sewer collection line owned or operated by the county to connect his premises with the water or sewer system and may fix charges for these connections. (1963, c. 985, s. 1; 1965, c. 969, s. 2; 1973, c. 822, s. 1.)

§ 153A-285. Prerequisites to acquisition of water, water rights, etc. — The word "authority" as used in G.S. 162A-7(b) through (f) includes counties and cities acting jointly or through joint agencies to provide water services or sewer services or both. No county or city acting jointly and no joint agency may divert water from one stream or river to another nor institute any proceeding in the nature of eminent domain to acquire water, water rights, or lands having water rights attached thereto until the diversion or acquisition is authorized by a certificate from the Board of Water and Air Resources pursuant to G.S. 162A-7. Any proceeding to secure a certificate from the Board shall be governed by the provisions of G.S. 162A-7(b) through 162A-7(f). (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

§ 153A-286. Law with respect to riparian rights not changed. — Nothing in this Article changes or modifies existing common or statute law with respect to the relative rights of riparian owners or others concerning the use of or disposal of water in the streams of North Carolina. (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

§ 153A-287. Diversion of water from certain river basins prohibited. — Diversions of water from any major river basin the main stream of which downstream from the point of the diversion is not located entirely in North Carolina is prohibited except when the diversion is now permitted by law. (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

§ 153A-288. Venue for actions by riparian owners. — Any riparian owner alleging injury as a result of an act taken pursuant to this Article by a county or city acting jointly or by a joint agency may maintain an action for relief against the act (i) in the county where the land of the riparian owner lies, (ii) in the county taking the action, or (iii) in any county in which the city or joint agency is located or operates. (1961, c. 1001, s. 1; 1973, c. 822, s. 1.)

§§ 153A-289, 153A-290: Reserved for future codification purposes.

Part 3. Special Provisions for Solid Waste Collection and Disposal.

§ 153A-291. Cooperation between the Department of Transportation and any county in establishing or operating solid waste disposal facilities. — A county and the Department of Transportation may enter into an agreement under which the Department of Transportation will make available to the county the use of equipment and prison and other labor in order to establish or operate solid waste disposal facilities within the county. The county shall reimburse the Department of Transportation for the cost of providing the equipment and labor. The agreement shall specify the work to be done thereunder and shall set forth the basis for reimbursement. (1967, c. 707; 1973, c. 507, s. 5; c. 822, s. 1; 1977, c. 464, s. 34.)

Editor's Note. — Pursuant to Session Laws 1973, c. 507, s. 5, "Board of Transportation" has been substituted for "State Highway Commission" and "Commission" in the section as enacted by Session Laws 1973, c. 822, s. 1.

The 1977 amendment substituted "Department of Transportation" for "Board of Transportation" in three places.

§ 153A-292. County collection and disposal; tax levy. — The board of county commissioners of any county is hereby empowered to establish and operate garbage, refuse, and solid waste collection and disposal facilities, or either, in areas outside of incorporated cities and towns where, in its opinion, the need for such facilities exists. The board may by ordinance regulate the use of such garbage, refuse, and solid waste disposal facilities; the nature of the solid wastes disposed of therein; and the method of disposal. Ordinances so adopted may be enforced by any law-enforcement officer having jurisdiction, which shall include, but not be limited to, officers of the county sheriff's department, county police department and the State Highway Patrol. The board may contract with any municipality, individual, or privately owned corporation to collect and dispose, or collect or dispose, of garbage, refuse, and solid waste in any such area provided no county shall be authorized by this Article to levy a disposal fee upon any municipality located in that county if the board of commissioners levy a countywide tax on property which provides in part for financing such disposal facilities. In the disposal of garbage, refuse, and solid waste, the board may use any vacant land owned by the county, or it may acquire suitable sites for such purpose. The board may make appropriations to carry out the activities herein authorized. The board may impose fees for the use of disposal facilities, and in the event it shall provide for the collection of garbage, refuse, and solid waste, it may charge fees for such collection service sufficient in its opinion to defray the expense of collection. Counties and municipalities therein are authorized to establish and operate joint collection and disposal facilities, or either of these, upon such terms as the governing bodies may determine. Such agreement shall be in writing and executed by the governing body of the participating units of local government.

The board of commissioners of each county is hereby authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies.

The board of county commissioners may use any vacant land owned by the county, and it may acquire by purchase or condemnation suitable land for the disposal sites, and in the event condemnation of said lands is necessary, the procedure used shall be that set forth in Chapter 40 of the North Carolina General Statutes.

The board may impose fees for the use of the disposal site, and if the county provides for collection services, it shall charge fees sufficient to defray the expense of collection.

The board of commissioners of each county is authorized to levy taxes for the special purpose of carrying out the authority conferred by this section, in addition to the rate of tax allowed by the Constitution for general purposes, and the General Assembly hereby gives its special approval for such tax levies. The board of commissioners is authorized to make appropriations from these tax funds, and from nonrevenue funds which may be available. Provided that the county board of commissioners, may authorize the erection of a gate across a state — or county-maintained highway leading directly to a sanitary landfill or garbage disposal site which is operated by the county. The gate may be erected at or in close proximity to the boundary of the landfill or garbage disposal site. The cost of the erection of the gate and its maintenance is to be borne by the county, and the gate shall be closed upon authority of the county commissioners. (1961, c. 514, s. 1; 1971, c. 568; 1973, c. 535; c. 822, s. 2.)

Editor's Note. — The above section was enacted by Session Laws 1973, c. 535, and codified as § 153-274. As directed by Session Laws 1973, c. 822, s. 2, it has also been codified as § 153A-292.

The 1971 General Assembly Gave Its Express Approval to the Levy of Taxes for Garbage Collection and Disposal. — See opinion of Attorney General to Mr. Edward H. McCormick, Harnett County Attorney, 41 N.C.A.G. 756 (1972).

Counties Are Required to Charge Fees Sufficient to Defray Costs of Garbage Collection. — See opinion of Attorney General to Mr. Bill Summerlin, 43 N.C.A.G. 41 (1973).

County Ordinances Involving Sanitation May Not Be Less Stringent Than State Regulations Adopted pursuant to G.S. 130-166.18. — See opinion of Attorney General to Mr. R. Kason Keiger, Town Attorney, Kernersville, N.C., 44 N.C.A.G. 40 (1974).

§§ 153A-293 to 153A-299: Reserved for future codification purposes.

ARTICLE 16.

County Service Districts.

§ 153A-300. Title; effective date. — This Article may be cited as "The County Service District Act of 1973," and is enacted pursuant to Article V, Sec. 2(4) of the Constitution of North Carolina, effective July 1, 1973. (1973, c. 489, s. 1; c. 822, s. 2.)

Editor's Note. — Sections 153A-300 through 153A-308 were originally codified as §§ 153-383 through 153-391. They have been recodified in Chapter 153A as directed by Session Laws 1973, c. 822, s. 2.

§ 153A-301. Purposes for which districts may be established. — The board of commissioners of any county may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities and functions in addition to or to a greater extent than those financed, provided or maintained for the entire county:

(1) Beach erosion control and flood and hurricane protection works;
(2) Fire protection;
(3) Recreation;
(4) Sewage collection and disposal systems;
(5) Solid waste collection and disposal systems;
(6) Water supply and distribution systems;
(7) Ambulance and rescue. (1973, c. 489, s. 1; c. 822, s. 2; c. 1375.)

Local Modification. — Gaston: 1977, c. 336.

§ 153A-302. Definition of service districts. — (a) Standards. — In determining whether to establish a proposed service district, the board of commissioners shall consider:

(1) The resident or seasonal population and population density of the proposed district;
(2) The appraised value of property subject to taxation in the proposed district;
(3) The present tax rates of the county and any cities or special districts in which the district or any portion thereof is located;
(4) The ability of the proposed district to sustain the additional taxes necessary to provide the services planned for the district;
(5) If it is proposed to furnish water, sewer, or solid waste collection services in the district, the probable net revenues of the projects to be financed and the extent to which the services will be self-supporting;
(6) Any other matters that the commissioners believe to have a bearing on whether the district should be established.

The board of commissioners may establish a service district if, upon the information and evidence it receives, the board finds that

(1) There is a demonstrable need for providing in the district one or more of the services listed in G.S. 153A-301;
(2) It is impossible or impracticable to provide those services on a countywide basis;
(3) It is economically feasible to provide the proposed services in the district without unreasonable or burdensome annual tax levies; and
(4) There is a demonstrable demand for the proposed services by persons residing in the district.

Territory lying within the corporate limits of a city or sanitary district may not be included unless the governing body of the city or sanitary district agrees by resolution to such inclusion.

(b) Report. — Before the public hearing required by subsection (c), the board of commissioners shall cause to be prepared a report containing:
(1) A map of the proposed district, showing its proposed boundaries;
(2) A statement showing that the proposed district meets the standards set out in subsection (a); and
(3) A plan for providing one or more of the services listed in G.S. 153A-301 to the district.

The report shall be available for public inspection in the office of the clerk to the board for at least four weeks before the date of the public hearing.

(c) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed by first-class mail at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(d) Effective Date. — The resolution defining a service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board of commissioners. (1973, c. 489, s. 1; c. 822, s. 2.)

Editor's Note. — Session Laws 1975, c. 849, s. 1, provides that subsection (d) is amended by adding at the end thereof the following: "Provided that any resolution adopted before August 1, 1975, may be effective as of July 1, 1975, if such resolution so provides." Section 2 of the act provides: "This act shall become effective upon ratification, and shall expire on Oct. 1, 1975, but such expiration shall not affect the validity of any service district established pursuant to this act."

§ 153A-303. Extension of service districts. — (a) Standards. — The board of commissioners may by resolution annex territory to any service district upon finding that:
(1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district; and
(2) That the area to be annexed requires the services of the district.

(b) Annexation by Petition. — The board of commissioners may also by resolution extend by annexation the boundaries of any service district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the board for annexation to the service district.

(c) Territory lying within the corporate limits of a city or sanitary district may not be annexed to a service district unless the governing body of the city or sanitary district agrees by resolution to such annexation.

(d) Report. — Before the public hearing required by subsection (e), the board shall cause to be prepared a report containing:

(1) A map of the service district and the adjacent territory, showing the present and proposed boundaries of the district;
(2) A statement showing that the area to be annexed meets the standards and requirements of subsections (a), (b), and (c); and
(3) A plan for extending services to the area to be annexed.

The report shall be available for public inspection in the office of the clerk to the board for at least two weeks before the date of the public hearing.

(e) Hearing and Notice. — The board shall hold a public hearing before adopting any resolution extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (d) is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be annexed. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(f) Effective Date. — The resolution extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the board. (1973, c. 489, s. 1; c. 822, s. 2.)

§ 153A-304. Consolidation of service districts. — (a) The board of commissioners may by resolution consolidate two or more service districts upon finding that:

(1) The districts are contiguous or are in a continuous boundary;
(2) The services provided in each of the districts are substantially the same; or
(3) If the services provided are lower for one of the districts, there is a need to increase those services for that district to the level of that enjoyed by the other districts.

(b) Report. — Before the public hearing required by subsection (c), the board of commissioners shall cause to be prepared a report containing:

(1) A map of the districts to be consolidated;
(2) A statement showing the proposed consolidation meets the standards of subsection (a); and
(3) If necessary, a plan for increasing the services for one of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the clerk to the board for at least two weeks before the public hearing.

(c) Hearing and Notice. — The board of commissioners shall hold a public hearing before adopting any resolution consolidating service districts. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the clerk to the board. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the hearing to the owners as shown by the county tax records as of the preceding January

1 of all property located within the consolidated district. The person designated by the board to mail the notice shall certify to the board that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(d) Effective Date. — The consolidation of service districts shall take effect at the beginning of a fiscal year commencing after passage of the resolution of consolidation, as determined by the board. (1973, c. 489, s. 1; c. 822, s. 2.)

§ 153A-305. Required provision or maintenance of services. — (a) New District. — When a county defines a new service district, it shall provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) Extended District. — When a county annexes territory to a service district, it shall provide, maintain, or let contracts for the services provided or maintained throughout the district to the residents of the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation.

(c) Consolidated District. — When a county consolidates two or more service districts, one of which has had provided or maintained a lower level of services, it shall increase the services within that district (or let contracts therefor) to a level comparable to those provided or maintained elsewhere in the consolidated district within a reasonable time, not to exceed one year, after the effective date of the consolidation. (1973, c. 489, s. 1; c. 822, s. 2.)

Local Modification. — Onslow: 1975, c. 757.

§ 153A-306. Abolition of service districts. — Upon finding that there is no longer a need for a particular service district and that there are no outstanding bonds or notes issued to finance projects in the district, the board of commissioners may by resolution abolish that district. The board shall hold a public hearing before adopting a resolution abolishing a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any service district shall take effect at the end of a fiscal year following passage of the resolution, as determined by the board. (1973, c. 489, s. 1; c. 822, s. 2.)

§ 153A-307. Taxes authorized; rate limitation. — A county may levy property taxes within defined service districts in addition to those levied throughout the county, in order to finance, provide or maintain for the districts services provided therein in addition to or to a greater extent than those financed, provided or maintained for the entire county. In addition, a county may allocate to a service district any other revenues whose use is not otherwise restricted by law.

Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the county as of the preceding January 1.

Property taxes may not be levied within any district established pursuant to this Article in excess of a rate on each one hundred dollars ($100.00) value of property subject to taxation which, when added to the rate levied countywide for purposes subject to the rate limitation, would exceed the rate limitation established in G.S. 153A-149(c), unless the portion of the rate in excess of this limitation is submitted to and approved by a majority of the qualified voters residing within the district. Any referendum held pursuant to this paragraph shall be held and conducted as provided in G.S. 153A-149. (1973, c. 489, s. 1; c. 822, s. 2.)

§ 153A-308. Bonds authorized. — A county may issue its general obligation bonds under the Local Government Bond Act to finance services, facilities, or functions provided within a service district. If a proposed bond issue is required by law to be submitted to and approved by the voters of the county, and if the proceeds of the proposed bond issue are to be used in connection with a service that is or, if the bond issue is approved, will be provided only for one or more service districts or at a higher level in service districts than countywide, the proposed bond issue must be approved concurrently by a majority of those voting throughout the entire county and by a majority of the total of those voting in all of the affected or to-be-affected service districts. (1973, c. 489, s. 1; c. 822, s. 2.)

ARTICLE 17.

§§ 153A-309 to 153A-319: Reserved for future codification purposes.

ARTICLE 18.

Planning and Regulation of Development.

Part 1. General Provisions.

§ 153A-320. Territorial jurisdiction. — Each of the powers granted to counties by this Article, by Chapter 157A, and by Chapter 160A, Article 19 may be exercised throughout the county except as otherwise provided in G.S. 160A-360. (1959, c. 1006, s. 1; c. 1007; 1965, c. 194, s. 2; c. 195; 1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

Editor's Note. — Chapter 157A, referred to in this section, was transferred to Chapter 160A, Article 19, Part 3B, by Session Laws 1973, c. 426, s. 62.

§ 153A-321. Planning agency. — A county may by ordinance create or designate one or more agencies to perform the following duties:

(1) Make studies of the county and surrounding areas;
(2) Determine objectives to be sought in the development of the study area;
(3) Prepare and adopt plans for achieving these objectives;
(4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;
(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;
(7) Perform any other related duties that the board of commissioners may direct.

An agency created or designated pursuant to this section may include one or more of the following, with any staff that the board of commissioners considers appropriate:

(1) A planning board or commission of any size (not less than three members) or composition considered appropriate, organized in any manner considered appropriate;
(2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20,

Part 1. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1.)

Member of County Planning Board Serves at Will of Commissioners. — See opinion of Attorney General to Mr. William C. Reeves, Madison County Attorney, 41 N.C.A.G. 230 (1971).

§ 153A-322. Supplemental powers. — A county or its designated planning agency may accept, receive, and disburse in furtherance of its functions funds, grants, and services made available by the federal government or its agencies, the State government or its agencies, any local government or its agencies, and private or civic sources. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with the State or federal governments or any agencies of either under which financial or other planning assistance is made available to the county and may agree to and comply with any reasonable conditions that are imposed upon the assistance.

A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to furnish technical planning assistance to the other local government or planning agency. A county, or its designated planning agency with the concurrence of the board of commissioners, may enter into and carry out contracts with any other county, city, regional council, or planning agency under which it agrees to pay the other local government or planning agency for technical planning assistance.

A county may make any appropriations that may be necessary to carry out an activity or contract authorized by this Article, by Chapter 157A, or by Chapter 160A, Article 19 or to support any planning agency that it may create or designate pursuant to this Article. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1.)

Editor's Note. — Chapter 157A, referred to in this section, was transferred to Chapter 160A, Article 19, Part 3B, by Session Laws 1973, c. 426, s. 62.

§ 153A-323. Procedure for adopting or amending ordinances under this Article and Chapter 160A, Article 19. — Before adopting or amending any ordinance authorized by this Article or Chapter 160A, Article 19, the board of commissioners shall hold a public hearing on the ordinance or amendment. The board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 15 days nor more than 25 days before the date fixed for the hearing. (1959, c. 1006, s. 1; c. 1007; 1973, c. 822, s. 1.)

The manifest intention of the General Assembly was that a public hearing be conducted at which those who opposed and those who favored adoption of the ordinance would have a fair opportunity to present their respective views. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968); Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

The requirement that a public hearing be conducted is mandatory. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968); Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

County commissioners are not required to hear all persons in attendance without limitation as to number and time. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

Nor to Answer Questions. — The county commissioners are not required to answer questions asked by those in attendance at the public meeting. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

Repetition of Same Views Not Contemplated. — The General Assembly did not contemplate that all persons entertaining the same views would have an unqualified right to iterate and reiterate these views in endless repetition. Freeland v. Orange County, 273 N.C. 452, 160 S.E.2d 282 (1968).

§ 153A-324. Enforcement of ordinances. — In addition to the enforcement provisions of this Article and subject to the provisions of the ordinance, any ordinance adopted pursuant to this Article, to Chapter 157A, or to Chapter 160A, Article 19 may be enforced by any remedy provided by G.S. 153A-123. (1959, c. 1006, s. 1; 1961, c. 414; 1973, c. 822, s. 1.)

Editor's Note. — Chapter 157A, referred to in this section, was transferred to Chapter 160A, Article 19, Part 3B, by Session Laws 1973, c. 426, s. 62.

Zoning Ordinance May Be Enforced by Injunction. — The relevant enabling acts provide for enforcement of the provisions of a zoning ordinance by injunction. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

§§ 153A-325 to 153A-329: Reserved for future codification purposes.

Part 2. Subdivision Regulation.

§ 153A-330. Subdivision regulation. — A county may by ordinance regulate the subdivision of land within its territorial jurisdiction. If a county, pursuant to G.S. 153A-342, has adopted a zoning ordinance that applies only to one or more designated portions of its territorial jurisdiction, it may adopt subdivision regulations that apply only within the areas so zoned and need not regulate the subdivision of land in the rest of its jurisdiction. (1959, c. 1007; 1965, c. 195; 1973, c. 822, s. 1.)

Limitation on Authority of County Commissioners to Adopt Subdivision Control Ordinance. — The authority of a board of county commissioners to adopt a subdivision control ordinance may be lawfully exercised only within prescribed limitations. Thus, a subdivision ordinance adopted by the board of county commissioners applies solely to land lying within the county and outside the subdivision-regulation jurisdiction of any municipality. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

§ 153A-331. Contents and requirements of ordinance. — A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision and of rights-of-way or easements for street and utility purposes; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice. A subdivision control ordinance may provide that a developer may provide funds to the county whereby the county may acquire recreational land or areas to serve the development or subdivision, including the purchase of land which may be used to serve more than one subdivision or development within the immediate area.

The ordinance may provide for the more orderly development of subdivisions by requiring the construction of community service facilities in accordance with county policies and standards, and, to assure compliance with these requirements, the ordinance may provide for the posting of bond or any other method that will offer guarantee of compliance.

The ordinance may provide for the reservation of school sites in accordance with comprehensive land use plans approved by the board of commissioners or the planning agency. For the authorization to reserve school sites to be effective, the board of commissioners or planning agency, before approving a comprehensive land use plan, shall determine jointly with the board of education with jurisdiction over the area the specific location and size of each school site to be reserved, and this information shall appear in the plan. Whenever a subdivision that includes part or all of a school site to be reserved under the plan is submitted for approval, the board of commissioners or the planning agency shall immediately notify the board of education. That board shall promptly decide whether it still wishes the site to be reserved and shall notify the board of commissioners or planning agency of its decision. If the board of education does not wish the site to be reserved, no site may be reserved. If the board of education does wish the site to be reserved, the subdivision may not be approved without the reservation. The board of education must acquire the site within 18 months after the date the site is reserved, either by purchase or by exercise of the power of eminent domain. If the board of education has not purchased the site or begun proceedings to condemn the site within the 18 months, the subdivider may treat the land as freed of the reservation.

The ordinance may require that a plat be prepared, approved, and recorded pursuant to its provisions whenever a subdivision of land takes place. (1959, c. 1007; 1973, c. 822, s. 1; 1975, c. 231.)

Editor's Note. — The 1975 amendment added the last sentence of the first paragraph.

Former Statute Did Not Authorize Laying Out, etc., of Highways, Streets or Alleys within Meaning of Constitution. — The statutory provisions of former §§ 153-266.3 and 153-266.4, as to what may and what must be included in a county subdivision ordinance, did not constitute "authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys" within the meaning of N.C. Const., Art. II, § 24. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

§ 153A-332. Ordinance to contain procedure for plat approval; approval prerequisite to plat recordation; statement by owner. — A subdivision ordinance adopted pursuant to this Part shall contain provisions setting forth the procedures to be followed in granting or denying approval of a subdivision plat before its registration.

The ordinance shall provide that the following agencies be given an opportunity to make recommendations concerning an individual subdivision plat before the plat is approved:

(1) The district highway engineer as to proposed streets, highways, and drainage systems;
(2) The county health director as to proposed water or sewerage systems;
(3) Any other agency or official designated by the board of commissioners.

The ordinance may provide that final approval of each individual subdivision plat is to be given by:

(1) The board of commissioners,
(2) The board of commissioners on recommendation of a planning agency, or
(3) A designated planning agency.

From the time that a subdivision ordinance is filed with the register of deeds of the county, no subdivision plat of land within the county's jurisdiction may be filed or recorded until it has been submitted to and approved by the appropriate board or agency, as specified in the subdivision ordinance, and until this approval is entered in writing on the face of the plat by the chairman or head of the board or agency. The register of deeds may not file or record a plat of a subdivision of land located within the territorial jurisdiction of the county that has not been approved in accordance with these provisions, and the clerk of superior court may not order or direct the recording of a plat if the recording would be in conflict with this section. The owner of land shown on a subdivision plat submitted for recording, or his authorized agent, shall sign a statement on the plat stating whether any land shown thereon is within the subdivision-regulation jurisdiction of the county. (1959, c. 1007; 1973, c. 822, s. 1.)

Editor's Note. — For article, "Transferring North Carolina Real Estate, Part I: How the Present System Functions," see 49 N.C.L. Rev. 413 (1971).

§ 153A-333. Effect of plat approval on dedications. — The approval of a plat does not constitute or effect the acceptance by the county or the public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat and shall not be construed to do so. (1959, c. 1007; 1973, c. 822, s. 1.)

§ 153A-334. Penalties for transferring lots in unapproved subdivisions. — If a person who is the owner or the agent of the owner of any land located within the territorial jurisdiction of a county that has adopted a subdivision regulation ordinance subdivides his land in violation of the ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds, he is guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision ordinance. (1959, c. 1007; 1973, c. 822, s. 1; 1977, c. 820, s. 1.)

Editor's Note. — The 1977 amendment rewrote the third sentence.

Purpose of Section. — The sole purpose of former § 153-266.6, similar to this section, was to compel compliance with ordinance provisions seeking to prevent any subdivision of land covered by its terms unless and until the proposed subdivision map had been submitted to and approved by designated governmental agencies. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

What the statute condemns as a misdemeanor is the description of land in any contract of sale, deed or other instrument of transfer by reference to a subdivision plat that has not been properly approved and recorded. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Recording of Instrument Containing Improper Reference Is Immaterial. — The misdemeanor defined in the statute relates to a sale or transfer of land with reference to a plat showing a subdivision of land before such plat has been properly approved under the ordinance and recorded in the office of the appropriate register of deeds. Whether the contract of sale, deed or other instrument of transfer is recorded is immaterial. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Person Subject to Prosecution. — The owner or agent of the owner of land within the "platting jurisdiction" granted the county commissioners by statute is the only person subject to criminal prosecution for sale of land by reference to an unapproved plat. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Prerequisites to Conviction. — As one of the prerequisites to conviction for sale of land by reference to an unapproved plat, it must be alleged and established that an ordinance regulating the subdivision of land was adopted by the board of county commissioners in accordance with the authority conferred by statute. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

Warrant Must Allege That Defendant Was Owner or Agent of Owner of Land within Platting District. — A warrant is fatally defective if it fails to allege one of the essential elements of the criminal offense, namely, that defendant was the owner or agent of the owner of land within the platting jurisdiction granted to the county commissioners by the statute. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

The general allegation that defendant's conduct constituted a misdemeanor in violation of the statute is insufficient. State v. McBane, 276 N.C. 60, 170 S.E.2d 913 (1969).

§ 153A-335. "Subdivision" defined. — For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously platted lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;
(2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved;
(3) The public acquisition by purchase of strips of land for widening or opening streets; and
(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations. (1959, c. 1007; 1973, c. 822, s. 1.)

Local Modification. — Cherokee: 1977, c. 253; Onslow: 1975, c. 105; Pamlico: 1977, c. 98; Rutherford: 1975, c. 263; 1977, c. 1.

§§ 153A-336 to 153A-339: Reserved for future codification purposes.

Part 3. Zoning.

§ 153A-340. Grant of power. — For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict

(1) The height, number of stories, and size of buildings and other structures,
(2) The percentage of lot that may be occupied,
(3) The size of yards, courts, and other open spaces,
(4) The density of population, and
(5) The location and use of buildings, structures, and land for trade, industry, residence, or other purposes, except farming.

These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. (1959, c. 1006, s. 1; 1967, c. 1208, s. 4; 1973, c. 822, s. 1.)

Editor's Note. — For note on coastal land use development and area-wide zoning, see 49 N.C.L. Rev. 866 (1971).

For comment entitled "Exclusionary Zoning and a Reluctant Supreme Court" (U.S.), see 13 Wake Forest L. Rev. 107 (1977).

Counties have no inherent authority to enact zoning ordinances. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Delegation of Power to Adopt Zoning Ordinances. — The authority of the General Assembly to delegate to municipal corporations power to legislate concerning local problems, such as zoning, is an exception (established by custom in most, if not all, of the states) to the general rule that legislative powers, vested in the General Assembly by N.C. Const., Art. II, § 1, may not be delegated by it. This exception to the doctrine of nondelegation is not limited to a delegation of such legislative authority to incorporated cities and towns, but extends, as to other types of local matters, to a like delegation to counties and other units established by the General Assembly for local government. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

The General Assembly may, notwithstanding N.C. Const., Art. II, § 1, confer upon county boards of commissioners power to adopt zoning ordinances otherwise valid. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

But the legislative body of the municipal corporation may not delegate to the municipal board of adjustment the power to zone; that is, the power originally vested in the General Assembly to legislate with reference to the use which may be made of land and the structures which may be erected or located thereon. It follows that a county zoning ordinance may not delegate such legislative powers to the county board of adjustment. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Zoning Ordinance Is Presumed Valid. — The presumption is that a zoning ordinance as a whole is a proper exercise of the police power. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Burden of Showing Invalidity Is on One Asserting It. — The burden to show that a zoning ordinance as a whole is not a proper exercise of the police power rests upon a property owner who asserts its invalidity. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Showing Ordinance Depreciates Complainant's Property Is Insufficient. — The mere fact that a zoning ordinance seriously depreciates the value of complainant's property is not enough, standing alone, to establish its invalidity. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Power of County Commissioners to Grant Special Exceptions. — The statute, which authorizes the board of county commissioners by regulation to provide that the board of adjustment or the board of county commissioners may issue special use permits or conditional permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the zoning ordinance, did not purport to confer more power upon the commissioners to grant special exceptions than the commissioners could delegate to the board of adjustment. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Like the board of adjustment, the commissioners cannot deny applicants a permit in their unguided discretion or, stated differently, refuse it solely because, in their view, a mobile-home park would "adversely affect the public interest." The commissioners must also proceed under standards, rules and regulations, uniformly applicable to all who apply for permits. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

Ordinance Requiring Denial of Permit Held Invalid. — So much of an ordinance as required the board of adjustment to deny a permit for the establishment of a mobile-home park in an A-1 agricultural district unless it found "that the granting of the special exception will not adversely affect the public interest" was beyond the authority of the board of county commissioners to enact and so was invalid. Keiger v. Winston-Salem Bd. of Adjustment, 278 N.C. 17, 178 S.E.2d 616 (1971).

§ 153A-341. Purposes in view. — Zoning regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration as to, among other things, the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county. In addition, the regulations shall be made with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development. (1959, c. 1006, s. 1; 1973, c. 822, s. 1.)

§ 153A-342. Districts; zoning less than entire jurisdiction. — A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated. (1959, c. 1006, s. 1; 1965, c. 194, s. 2; 1973, c. 822, s. 1.)

§ 153A-343. Method of procedure. — The board of commissioners shall, in accordance with the provisions of this Article, provide for the manner in which zoning regulations and restrictions and the boundaries of zoning districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. (1973, c. 822, s. 1.)

§ 153A-344. Planning agency; zoning plan; certification to board of commissioners; amendments. — To exercise the powers conferred by this Part, a county shall create or designate a planning agency under the provisions of this Article or of a local act. The planning agency shall prepare a zoning plan, including both the full text of a zoning ordinance and maps showing proposed district boundaries. The planning agency may hold public hearings in the course of preparing the plan. Upon completion, the planning agency shall certify the plan to the board of commissioners. The board of commissioners may not hold the public hearing required by G.S. 153A-323 or take action until it has received a certified plan from the planning agency. Following its required public hearing, the board of commissioners may refer the plan back to the planning agency for any further recommendations that the agency may wish to make prior to final action by the board in adopting, modifying and adopting, or rejecting the ordinance.

Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified, or repealed. Whenever territory is added to an existing designated zoning area, it shall be treated as an amendment to the zoning ordinance for that area. Before an amendment may be adopted, it must be referred to the planning agency for the agency's recommendation. The agency shall be given at least 30 days in which to make a recommendation. The board of commissioners is not bound by the recommendations, if any, of the planning agency. (1959, c. 1006, s. 1; 1965, c. 194, s. 3; 1973, c. 822, s. 1.)

The manifest intention of the General Assembly was that a public hearing be conducted at which those who opposed and those who favored adoption of an ordinance would have a fair opportunity to present their respective views. Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

The requirement that a public hearing be conducted is mandatory. Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

§ 153A-345. Board of adjustment. — (a) The board of commissioners may provide for the appointment and compensation, if any, of a board of adjustment consisting of at least five members, each to be appointed for three years. In appointing the original members of the board, or in filling vacancies caused by the expiration of the terms of existing members, the board of commissioners may appoint some members for less than three years to the end that thereafter the terms of all members do not expire at the same time. The board of commissioners may provide for the appointment and compensation, if any, of alternate members to serve on the board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of a regular member, has and may exercise all the powers and duties of a regular member. If the board of commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall have at least one resident as a member of the board of adjustment.

A county may designate a planning agency to perform the duties of a board of adjustment in addition to its other duties.

(b) The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcing an ordinance adopted pursuant to this Part. Any person aggrieved or any officer, department, board, or bureau of the county may take an appeal. Appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In that case proceedings may not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice of the appeal to the parties, and decide the appeal within a reasonable time. The board of adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the circumstances. To this end the board has all of the powers of the officer from whom the appeal is taken.

(c) The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions that may arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under the zoning ordinance.

(d) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment may, in passing upon appeals, vary or modify any regulation or provision of the ordinance relating to the use, construction, or alteration of buildings or structures or the use of land, so that the spirit of the ordinance is observed, public safety and welfare secured, and substantial justice done.

(e) The board of adjustment, by a vote of four fifths of its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. Each decision of the board is subject to review by the superior court by proceedings in the nature of certiorari.

(f) The chairman of the board of adjustment or any member temporarily acting as chairman may in his official capacity administer oaths to witnesses in any matter coming before the board. (1959, c. 1006, s. 1; 1965, c. 194, s. 4; 1967, c. 1208, ss. 5-7; 1973, c. 822, s. 1.)

Authority to Determine Facts and Draw Conclusions. — The legislature may delegate to the board of adjustment, as a quasi-judicial body, the authority to determine facts and therefrom to draw conclusions as a basis of its official action. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

The decisions of the board are final, subject to the right of the courts to review errors in law and to give relief against its orders which are arbitrary, oppressive, or attended with manifest abuse of authority. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

The writ permitted to obtain review of the decision of a board of adjustment is a writ to bring the matter before the court upon the evidence presented by the record itself for review of alleged errors of law. Jackson v. Guilford County Bd. of Adjustment, 2 N.C. App. 408, 163 S.E.2d 265 (1968), aff'd, 275 N.C. 155, 166 S.E.2d 78 (1969).

Decisions of a board of adjustment are not subject to collateral attack. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

This section prevents collateral attacks on decisions of the board of adjustment Forsyth County v. York, 19 N.C. App. 361, 198 S.E.2d 770, cert. denied, 284 N.C. 253, 200 S.E.2d 653 (1973), holding that defendant in action for violating zoning ordinance, having failed to exhaust his statutory remedies, could not challenge validity of ordinance.

They Are Only Reviewable on Certiorari for Errors in Law and Abuse of Authority. — The decisions of the board of adjustment are final, subject to the right of courts on certiorari to review errors in law and to give relief against its orders which are arbitrary, oppressive or attended with manifest abuse of authority. County of Durham v. Addison, 262 N.C. 280, 136 S.E.2d 600 (1964).

Equity Will Not Relieve against Zoning Unless Property Rights Invaded or There Is No Other Adequate Remedy. — There is no ground for equitable relief against zoning where there has been no invasion of property rights, or where there is an adequate remedy at law, as by certiorari or mandamus, or by pursuit of a statutory remedy. Michael v. Guilford County, 269 N.C. 515, 153 S.E.2d 106 (1967).

Depreciation of Complainant's Property Does Not Invalidate Ordinance. — The mere fact that a zoning ordinance seriously depreciates the value of complainant's property is not enough, standing alone, to establish its invalidity. Michael v. Guilford County, 269 N.C. 515, 153 S.E.2d 106 (1967).

Special Exception Defined. — A special exception within the meaning of a zoning ordinance is one which is expressly permitted in a given zone upon proof that certain facts and conditions detailed in the ordinance exist. It is granted by the board, after a public hearing, upon a finding that the specified conditions have been satisfied. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

A property owner's right to a special-exception permit cannot be made to hinge upon whether the board considers the proposed structure beneficial or harmful to the community. Such power would subject the board to the pressures of individuals or groups who, for an infinite variety of reasons, might oppose the permit, and enable it to make a different rule of law in every case. This section, which empowers the commissioners to authorize the board of adjustment to permit special exceptions "in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance," does not purport to confer such unbridled discretion upon it. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970).

A provision of a county ordinance requiring the board of adjustment to deny a permit if it finds the granting of it will adversely affect the public interest, was in excess of the authority which the statute permits to be so conferred upon the board. Jackson v. Guilford County Bd. of Adjustment, 275 N.C. 155, 166 S.E.2d 78 (1969).

Cited in Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

§ 153A-346. Conflict with other laws. — When regulations made under authority of this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under authority of this Part govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by regulations made under authority of this Part, the provisions of the other statute or local ordinance or regulation govern. (1959, c. 1006, s. 1; 1973, c. 822, s. 1.)

§ 153A-347. Part applicable to buildings constructed by the State and its subdivisions. — Each provision of this Part is applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions. (1959, c. 1006, s. 1; 1973, c. 822, s. 1.)

§§ 153A-348, 153A-349: Reserved for future codification purposes.

Part 4. Building Inspection.

§ 153A-350. "Building" defined. — As used in this Part, the words "building" or "buildings" include other structures. (1973, c. 822, s. 1.)

Mobile Home Deemed "Building". — See Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

§ 153A-351. Inspection department; certification of electrical inspectors. — (a) A county may create an inspection department, consisting of one or more inspectors who may be given the titles of building inspector, electrical inspector, plumbing inspector, housing inspector, zoning inspector, heating and air-conditioning inspector, fire prevention inspector, deputy or assistant inspector, or any other title that is generally descriptive of the duties assigned. The department may be headed by a superintendent or director of inspections.

(a1) Every county shall perform the duties and responsibilities set forth in G.S. 153A-352 either by:

(1) Creating its own inspection department;

(2) Creating a joint inspection department in cooperation with one or more other units of local government, pursuant to G.S. 153A-353 or Part 1 of Article 20 of Chapter 160A; or,

(3) Contracting with another unit of local government for the provision of inspection services pursuant to Part 1 of Article 20 of Chapter 160A.

Such action shall be taken no later than the applicable date in the schedule below, according to the county's population as published in the 1970 United States Census:

Counties over 75,000 population — July 1, 1979
Counties between 50,001 and 75,000 — July 1, 1981

Counties between 25,001 and 50,000 — July 1, 1983
Counties 25,000 and under — July 1, 1985.

In the event that any county shall fail to provide inspection services by the date specified above or shall cease to provide such services at any time thereafter, the Commissioner of Insurance shall arrange for the provision of such services, either through personnel employed by his Department or through an arrangement with other units of government. In either event, the Commissioner shall have and may exercise within the county's jurisdiction all powers made available to the board of county commissioners with respect to building inspection under Part 4 of Article 18 of this Chapter and Part 1 of Article 20 of Chapter 160A. Whenever the Commissioner has intervened in this manner, the county may assume provision of inspection services only after giving the Commissioner two years' written notice of its intention to do so; provided, however, that the Commissioner may waive this requirement or permit assumption at an earlier date if he finds that such earlier assumption will not unduly interfere with arrangements he has made for the provision of those services.

(b) No person may perform electrical inspections pursuant to this Part unless he has been certified as qualified by the Commissioner of Insurance. To be certified a person must pass a written examination based on the electrical regulations included in the latest edition of the State Building Code as filed with the Secretary of State. The examination shall be under the supervision of and conducted according to rules and regulations prescribed by the Chief State Electrical Inspector or Engineer of the State Department of Insurance and the Board of Examiners of Electrical Contractors. It shall be held quarterly, in Raleigh or any other place designated by the Chief State Electrical Inspector or Engineer.

The rules and regulations may provide for the certification of class I, class II, and class III inspectors, according to the results of the examination. The examination shall be based on the type and character of electrical installations being made in the territory in which the applicant wishes to serve as an electrical inspector. A class I inspector may serve anywhere in the State, but class II and class III inspectors shall be limited to service in the territory for which they have qualified.

The Commissioner of Insurance shall issue a certificate to each person who passes the examination, approving the person for service in a designated territory. To remain valid, a certificate must be renewed each January by payment of an annual renewal fee of one dollar ($1.00). The examination fee shall be five dollars ($5.00).

If the person appointed by a county as electrical inspector fails to pass the examination, the county shall continue to make appointments until an appointee has passed the examination. For the interim the Commissioner of Insurance may authorize the county to use a temporary inspector.

The provisions of this subsection shall become void and ineffective on such date as the North Carolina Code Officials Qualification Board certifies to the Secretary of State that it has placed in effect a certification system for electrical inspectors pursuant to its authority granted by Article 9B of Chapter 143 of the General Statutes. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 940, 1031; 1961, cc. 763, 884, 1036; 1963, cc. 639, 868; 1965, cc. 243, 371, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, ss. 1, 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1010, s. 4; c. 1064, ss. 1, 4, 5; c. 1066, s. 1; 1973, c. 822, s. 1; 1977, c. 531, ss. 2, 3.)

Editor's Note. — The 1977 amendment added subsection (a1) and the last sentence of subsection (b).

Session Laws 1977, c. 531, s. 7, provides: "The provisions of this act shall not be applicable to municipalities of less than 25,000 population or to counties of less than 75,000 population according to the 1970 U.S. Census, and shall not be applicable to any officials or employees of any such municipality or county unless the Legislative Research Commission makes affirmative findings of fact that as of July 1, 1984, there exist within the State adequate in-service and pre-service training opportunities to permit employees or prospective employees of such municipalities and counties to secure at various convenient places throughout the State or by correspondence courses the training necessary to retain limited certificates or to secure standard certificates, and to provide an adequate pool of qualified personnel to enforce applicable codes in such municipalities or counties. Unless the Legislative Research Commission shall make such affirmative findings of fact, then neither the North Carolina Code Officials Qualification Board nor the North Carolina Building Code Council nor the Commissioner of Insurance nor the Department of Insurance shall enforce any provision of this act as to any municipality of less than 25,000 population or any county of less than 75,000 population according to the 1970 U.S. Census or as to any official or employee of any such municipality or county."

§ 153A-351.1. Qualifications of inspectors. — On and after the applicable date set forth in the schedule in G.S. 153A-351, no county shall employ an inspector to enforce the State Building Code as a member of a county or joint inspection department who does not have one of the following types of certificates issued by the North Carolina Code Officials Qualification Board attesting to his qualifications to hold such position: (i) a probationary certificate, valid for one year only; (ii) a standard certificate; or (iii) a limited certificate, which shall be valid only as an authorization for him to continue in the position held on the date specified in G.S. 143-151.10(c) and which shall become invalid if he does not successfully complete in-service training prescribed by the Qualification Board within the period specified in G.S. 143-151.10(c). An inspector holding one of the above certificates can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position. (1977, c. 531, s. 4.)

Cross Reference. — As to the North Carolina Code Officials Qualification Board, see §§ 143-151.8 through 143-151.20.

Editor's Note. — The reference to § 143-151.10(c) in two places above appears to be incorrect. The reference should be to § 143-151.13(c).

Session Laws 1977, c. 531, s. 7, provides: "The provisions of this act shall not be applicable to municipalities of less than 25,000 population or to counties of less than 75,000 population according to the 1970 U.S. Census, and shall not be applicable to any officials or employees of any such municipality or county unless the Legislative Research Commission makes affirmative findings of fact that as of July 1, 1984, there exist within the State adequate in-service and pre-service training opportunities to permit employees or prospective employees of such municipalities and counties to secure at various convenient places throughout the State or by correspondence courses the training necessary to retain limited certificates or to secure standard certificates, and to provide an adequate pool of qualified personnel to enforce applicable codes in such municipalities or counties. Unless the Legislative Research Commission shall make such affirmative findings of fact, then neither the North Carolina Code Officials Qualification Board nor the North Carolina Building Code Council nor the Commissioner of Insurance nor the Department of Insurance shall enforce any provision of this act as to any municipality of less than 25,000 population or any county of less than 75,000 population according to the 1970 U.S. Census or as to any official or employee of any such municipality or county."

§ 153A-352. Duties and responsibilities. — The duties and responsibilities of an inspection department and of the inspectors in it are to enforce within the county's territorial jurisdiction State and local laws and local ordinances and regulations relating to:

(1) The construction of buildings;

(2) The installation of such facilities as plumbing systems, electrical systems, heating systems, refrigeration systems, and air-conditioning systems;

(3) The maintenance of buildings in a safe, sanitary, and healthful condition;

(4) Other matters that may be specified by the board of commissioners.

These duties and responsibilities include receiving applications for permits and issuing or denying permits, making necessary inspections, issuing or denying certificates of compliance, issuing orders to correct violations, bringing judicial actions against actual or threatened violations, keeping adequate records, and taking any other actions that may be required to adequately enforce the laws and ordinances and regulations. The board of commissioners may enact reasonable and appropriate provisions governing the enforcement of the laws and ordinances and regulations. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 940, 1031; 1961, cc. 763, 884, 1036; 1963, cc. 639, 868; 1965, cc. 243, 371, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, ss. 1, 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1010, s. 4; c. 1064, ss. 1, 4, 5; c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-353. Joint inspection department; other arrangements. — A county may enter into and carry out contracts with one or more other counties or cities under which the parties agree to create and support a joint inspection department for enforcing those State and local laws and local ordinances and regulations specified in the agreement. The governing bodies of the contracting units may make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a county may designate an inspector from another county or from a city to serve as a member of the county inspection department, with the approval of the governing body of the other county or city. The inspector, while exercising the duties of the position, is a county employee. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1959, c. 940; 1963, c. 639; 1965, c. 371; 1967, c. 495, s. 1; 1969, c. 918; c. 1010, s. 4; c. 1064, ss. 1, 5; c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-354. Financial support. — A county may appropriate any available funds for the support of its inspection department. It may provide for paying inspectors fixed salaries, or it may reimburse them for their services by paying over part or all of any fees collected. It may fix reasonable fees for issuing permits, for inspections, and for other services of the inspection department. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 940, 1031; 1961, cc. 763, 884, 1036; 1963, cc. 639, 868; 1965, cc. 243, 371, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, ss. 1, 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1010, s. 4; c. 1064, ss. 1, 4, 5; c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-355. Conflicts of interest. — Unless he is the owner of the building, no member of an inspection department may be financially interested in furnishing labor, material, or appliances for the construction, alteration, or maintenance of any building within the county's territorial jurisdiction or any part or system thereof, or in making plans or specifications therefor. No member of any inspection department may engage in any work that is inconsistent with his duties or with the interest of the county. (1937, c. 57; 1941, c. 105; 1947, c. 719; 1951, c. 651; 1953, c. 984; 1955, cc. 144, 942, 1171; 1957, cc. 415, 456, 1286, 1294; 1959, cc. 399, 1031; 1961, cc. 763, 884, 1036; 1963, c. 868; 1965, cc. 243, 453, 494, 846; 1967, cc. 45, 73, 113; c. 495, s. 3; 1969, cc. 675, 918; c. 1003, s. 7; c. 1064, ss. 1, 4; c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-356. Failure to perform duties. — If a member of an inspection department willfully fails to perform the duties required of him by law, or willfully improperly issues a permit, or gives a certificate of compliance without first making the inspections required by law, or willfully improperly gives a certificate of compliance, he is guilty of a misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-357. Permits. — No person may commence or proceed with:

(1) The construction, reconstruction, alteration, repair, removal, or demolition of any building;

(2) The installation, extension, or general repair of any plumbing system;

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. No permit may be issued unless the plans and specifications are identified by the name and address of the author thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. Violation of this section constitutes a misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

Cross Reference. — For provisions specifying that permits required for installation, alteration, or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards meet all requirements of this section or § 160A-417, see § 143-155.

Applied in Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

§ 153A-358. Time limitations on validity of permits. — A permit issued pursuant to G.S. 153A-357 expires six months, or any lesser time fixed by ordinance of the county, after the date of issuance if the work authorized by the permit has not commenced. If after commencement the work is discontinued for a period of 12 months, the permit therefor immediately expires. No work authorized by a permit that has expired may thereafter be performed until a new permit has been secured. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-359. Changes in work. — After a permit has been issued, no change or deviation from the terms of the application, the plans and specifications, or the permit, except if the change or deviation is clearly permissible under the State Building Code, may be made until specific written approval of the proposed change or deviation has been obtained from the inspection department. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-360. Inspections of work in progress. — As the work pursuant to a permit progresses, local inspectors shall make as many inspections of the work as may be necessary to satisfy them that it is being done according to the provisions of the applicable State and local laws and local ordinances and regulations and of the terms of the permit. In exercising this power, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

Cross Reference. — As to inspections by the energy and insulation inspector during the installation, alteration or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards, see § 143-157.

§ 153A-361. Stop orders. — Whenever a building or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of a State or local building law or local building ordinance or regulation, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or that presents such a hazard to be immediately stopped. The stop order shall be in writing and directed to the person doing the work, and shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. The owner or builder may appeal from a stop order to the North Carolina Commissioner of Insurance within five days after the day the order is issued. The owner or builder shall give to the Commissioner of Insurance written notice of appeal, with a copy to the local inspector. The Commissioner shall promptly conduct a hearing at which the appellant and the inspector shall be permitted to submit relevant evidence, and the Commissioner shall rule on the appeal as expeditiously as possible. Pending the ruling by the Commissioner of Insurance on an appeal, no further work may take place in violation of a stop order. Violation of a stop order constitutes a misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-362. Revocation of permits. — The appropriate inspector may revoke and require the return of any permit by giving written notice to the permit holder, stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application or plans and specifications, for refusal or failure to comply with the requirements of any applicable State or local laws or local ordinances or regulations, or for false statements or misrepresentations made in securing the permit. A permit mistakenly issued in violation of an applicable State or local law or local ordinance or regulation also may be revoked. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-363. Certificates of compliance. — At the conclusion of all work done under a permit, the appropriate inspector shall make a final inspection. If he finds that the completed work complies with all applicable State and local laws and local ordinances and regulations and with the terms of the permit, he shall issue a certificate of compliance. No new building or part thereof may be occupied, no addition or enlargement of an existing building may be occupied, and no existing building that has been altered or removed may be occupied until the inspection department has issued a certificate of compliance. A temporary certificate of compliance may be issued permitting occupancy for a stated period of specified portions of the building that the inspector finds may safely be occupied before completion of the entire building. Violation of this section constitutes a misdemeanor. (1973, c. 822, s. 1.)

Cross Reference. — As to issuance by the energy and insulation inspector of a certificate of compliance for work done with regard to the installation, alteration, or restoration of any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards, see § 143-157.

§ 153A-364. Periodic inspections for hazardous or unlawful conditions. —The inspection department shall make periodic inspections, subject to the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings within its territorial jurisdiction.

In addition, it shall make any necessary inspections when it has reason to believe that such conditions may exist in a particular building. In exercising these powers, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-365. Defects in buildings to be corrected. — If a local inspector finds any defect in a building, or finds that the building has not been constructed in accordance with the applicable State and local laws and local ordinances and regulations, or finds that a building because of its condition is dangerous or contains fire-hazardous conditions, he shall notify the owner or occupant of the building of its defects, hazardous conditions, or failure to comply with law. The owner and the occupant shall each immediately remedy the defects, hazardous conditions, or violations of law in the property each owns. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-366. Unsafe buildings condemned. — The inspector shall condemn as unsafe each building that appears to him to be especially dangerous to life because of its liability to fire, bad conditions of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes; and he shall affix a notice of the dangerous character of the building to a conspicuous place on its exterior wall. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-367. Removing notice from condemned building. — If a person removes a notice that has been affixed to a building by a local inspector and that states the dangerous character of the building, he is guilty of a misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-368. Action in event of failure to take corrective action. — If the owner of a building that has been condemned as unsafe pursuant to G.S. 153A-366 fails to take prompt corrective action, the local inspector shall by certified or registered mail to his last known address or by personal service give him written notice:

(1) That the building is in a condition that appears to constitute a fire or safety hazard or to be dangerous to life, health, or other property;

(2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner is entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the inspector may issue any order to repair, close, vacate, or demolish the building that appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building in question at least 10 days before the day of the hearing and a notice of the hearing is published at least once not later than one week before the hearing. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-369. Order to take corrective action. — If, upon a hearing held pursuant to G.S. 153A-368, the inspector finds that the building is in a condition that constitutes a fire or safety hazard or renders it dangerous to life, health, or other property, he shall issue a written order, directed to the owner of the building, requiring the owner to remedy the defective conditions by repairing, closing, vacating, or demolishing the building or taking other necessary steps, within such period, not less than 60 days, as the inspector may prescribe. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-370. Appeal; finality of order not appealed. — An owner who has received an order under G.S. 153A-369 may appeal from the order to the board of commissioners by giving written notice of appeal to the inspector and to the clerk within 10 days following the day the order is issued. In the absence of an appeal, the order of the inspector is final. The board of commissioners shall hear any appeal within a reasonable time and may affirm, modify and affirm, or revoke the order. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-371. Failure to comply with order. — If the owner of a building fails to comply with an order issued pursuant to G.S. 153A-369 from which no appeal has been taken, or fails to comply with an order of the board of commissioners following an appeal, he is guilty of a misdemeanor. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-372. Equitable enforcement. — Whenever a violation is denominated a misdemeanor under the provisions of this Part, the county, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building involved. 1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

Applied in Mecklenburg County v. Westbery, 32 N.C. App. 630, 233 S.E.2d 658 (1977).

§ 153A-373. Records and reports. — The inspection department shall keep complete, permanent, and accurate records in convenient form of each application received, each permit issued, each inspection and reinspection made, and each defect found, each certificate of compliance granted, and all other work and activities of the department. The department shall submit periodic reports to the board of commissioners and to the Commissioner of Insurance as the board or the Commissioner may require. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-374. Appeals. — Unless otherwise provided by law, any appeal from an order, decision, or determination of a member of a local inspection department pertaining to the State Building Code or any other State building law shall be taken to the Commissioner of Insurance or other official specified in G.S. 143-139, by filing a written notice with him and with the inspection department within 10 days after the day of the order, decision, or determination. Further appeals may be taken to the State Building Code Council or to the courts as provided by law. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

§ 153A-375. Establishment of fire limits. — A county may by ordinance establish and define fire limits in any area within the county and not within a city. The limits may include only business and industrial areas. Within any fire limits, no frame or wooden building or addition thereto may be erected, altered, repaired, or moved (either into the fire limits or from one place to another within the limits) except upon the permit of the inspection department and approval of the Commissioner of Insurance. The board of commissioners may make additional regulations necessary for the prevention, extinguishment, or mitigation of fires within the fire limits. (1969, c. 1066, s. 1; 1973, c. 822, s. 1.)

Part 5. Community Development.

§ 153A-376. Community development programs and activities. — (a) Any county is authorized to engage in, to accept federal and State grants and loans for, and to appropriate and expend funds for community development programs and activities. In undertaking community development programs and activities, in addition to other authority granted by law, a county may engage in the following activities:

(1) Programs of assistance and financing of rehabilitation of private buildings principally for the benefit of low and moderate income persons, or for the restoration or preservation of older neighborhoods or properties, including direct repair, the making of grants or loans, the subsidization of interest payments on loans, and the guaranty of loans;

(2) Programs concerned with employment, economic development, crime prevention, child care, health, drug abuse, education, and welfare needs of persons of low and moderate income.

(b) Any board of county commissioners may exercise directly those powers granted by law to county redevelopment commissions and those powers granted by law to county housing authorities. Any board of county commissioners desiring to do so may delegate to redevelopment commission or to any housing authority the responsibility of undertaking or carrying out any specified community development activities. Any board of county commissioners and any municipal governing body may by agreement undertake or carry out for each other any specified community development activities. Any board of county commissioners may contract with any person, association, or corporation in undertaking any specified community development activities. Any county or city board of health, county board of social services, or county or city board of education, may by agreement undertake or carry out for any board of county commissioners any specified community development activities.

(c) Any board of county commissioners undertaking community development programs or activities may create one or more advisory committees to advise it and to make recommendations concerning such programs or activities.

(d) Any board of county commissioners proposing to undertake any loan guaranty or similar program for rehabilitation of private buildings is authorized to submit to its voters the question whether such program shall be undertaken, such referendum to be conducted pursuant to the general and local laws applicable to special elections in such county.

(e) No state or local taxes shall be appropriated or expended by a county pursuant to this section for any purpose not expressly authorized by G.S. 153A-149, unless the same is first submitted to a vote of the people as therein provided. (1975, c. 435, s. 2; c. 689, s. 2.)

Editor's Note. — The 1975 amendment inserted "State or local" near the beginning of subsection (e).

For a symposium on municipal finance, see 1976 Duke L.J. 1051 (1976).

§ 153A-377. Acquisition and disposition of property for redevelopment. — In addition to the powers granted by G.S. 153A-376, any county is authorized, either as a part of a community development program or independently thereof, and without the necessity of compliance with the Urban Redevelopment Law, to exercise the following powers:

(1) To acquire, by voluntary purchase from the owner or owners, real property which is either:

  a. Blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

  b. Appropriate for rehabilitation or conservation activities;

  c. Appropriate for housing construction of the economic development of the community; or

  d. Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open space, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;

(2) To clear, demolish, remove, or rehabilitate buildings and improvements on land so acquired; and

(3) To retain property so acquired for public purposes, or to dispose, through sale, lease, or otherwise, of any property so acquired to any person, firm, corporation, or governmental unit; provided, the disposition of such property shall be undertaken in accordance with the procedures of G.S. 153A-176, or the procedures of G.S. 160A-514, or any applicable local act modifying such procedures. (1977, c. 660, s. 2.)

§§ 153A-378 to 153A-390: Reserved for future codification purposes.

ARTICLE 19.

Regional Planning Commissions.

§ 153A-391. Creation; admission of new members. — Two or more counties, cities, or counties and cities may create a regional planning commission by adopting identical concurrent resolutions to that effect in accordance with the provisions and procedures of this Article. A county or city may join an existing regional planning commission with the consent of the existing member governments.

The resolution creating a regional planning commission may be modified, amended, or repealed by the unanimous action of the member governments. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

Local Modification. — Cherokee, Graham, Jackson and Swain: 1973, c. 1406.

§ 153A-392. Contents of resolution. — The resolutions creating a regional planning commission shall :

(1) Specify the name of the commission;

(2) Establish the number of delegates to represent each member government, fix the delegates' terms of office and the conditions, if any, for their removal, provide methods for filling vacancies, and prescribe the compensation and allowances, if any, to be paid to delegates;

(3) Set out the method of determining the financial support that will be given to the commission by each member government;

(4) Set out the budgetary and fiscal control procedures to be followed by the commission, which shall substantially comply with the Local Government Budget and Fiscal Control Act (Chapter 159, Subchapter III).

In addition the resolution may, but need not, contain rules and regulations for the conduct of commission business and any other matters pertaining to the organization, powers, and functioning of the commission that the member governments consider appropriate. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§ 153A-393. Withdrawal from commission. — A member government may withdraw from a regional planning commission by giving at least two years' written notice to the other counties and cities involved. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§ 153A-394. Organization of the commission. — Upon its creation, a regional planning commission shall meet at a time and place agreed upon by the counties and cities involved. It shall organize by electing a chairman and any other officers that the resolution specifies or that the commission considers advisable. The commission may adopt bylaws for the conduct of its business. All commission meetings shall be open to the public.

The chairman of the commission may appoint any committees authorized by the bylaws. Committee members need not be delegates to the commission. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§ 153A-395. Powers and duties. — A regional planning commission may:

(1) Apply for, accept, receive, and disburse funds, grants, and services made available to it by the State of North Carolina or any agency thereof, the federal government or any agency thereof, any unit of local government or any agency thereof, or any private or civic agency;
(2) Employ personnel;
(3) Contract with consultants;
(4) Contract for services with the State of North Carolina, any other state, the United States, or any agency of those governments;
(5) Study and inventory regional goals, resources, and problems;
(6) Prepare and amend regional development plans, which may include recommendations for land use within the region, recommendations concerning the need for and general location of public works of regional concern, recommendations for economic development of the region, and any other relevant matters.
(7) Cooperate with and provide assistance to federal, State, other regional, and local planning activities within the region;
(8) Encourage local efforts toward economic development;
(9) Make recommendations for review and action to its member governments and other public agencies that perform functions within the region;
(10) Exercise any other power necessary to the discharge of its duties. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§ 153A-396. Fiscal affairs. — Each county and city having membership in a regional planning commission may appropriate to the commission revenues not otherwise limited as to use by law. Services of personnel, use of equipment and office space, and other services may be made available to a commission by its member governments as a part of their financial support. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§ 153A-397. Reports. — Each regional planning commission shall prepare and distribute to its member governments and make available to the public an annual report of its activities, including a financial statement. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§ 153A-398. Regional planning and economic development commissions. — Two or more counties, cities, or counties and cities may create a regional planning and economic development commission by adopting identical concurrent resolutions to that effect. Such a commission has the powers granted by this Article and the powers granted by Chapter 158, Article 2. If such a commission is created, it shall maintain separate books of account for appropriations and expenditures made pursuant to this Article and for appropriations and expenditures made pursuant to Chapter 158, Article 2. (1961, c. 722, s. 3; 1973, c. 822, s. 1.)

§§ 153A-399, 153A-400: Reserved for future codification purposes.

ARTICLE 20.

Consolidation and Governmental Study Commissions.

§ 153A-401. Establishment; support. — (a) Two or more counties or cities or counties and cities may by concurrent resolutions of their governing bodies establish a charter or governmental study commission as provided in this section:

(1) Two or more counties that are contiguous or that lie within a continuous boundary may create a commission to study the consolidation of the counties or of one or more functions and services of the counties.

(2) Two or more cities that are contiguous or that lie within a continuous boundary may create a commission to study the consolidation of the cities or of one or more functions and services of the cities.

(3) A county and one or more cities within the county may create a commission to study the consolidation of the county and the city or cities or of one or more of their functions and services.

(b) A county or city that participates in the establishment of a commission pursuant to this Article may appropriate for the support of the commission any revenues not otherwise limited as to use by law. (1973, c. 822, s. 1.)

§ 153A-402. Purposes of a commission. — A commission established pursuant to this Article may be charged with any of the following purposes:

(1) To study the powers, duties, functions, responsibilities, and organizational structures of the counties or cities that established the commission and of other units of local government and public agencies within those counties or cities;

(2) To prepare a report on its studies and findings;

(3) To prepare a plan for consolidating one or more functions and services of the governments that established the commission;

(4) To prepare drafts of any agreements or legislation necessary to effect the consolidation of one or more functions and services;

(5) To prepare a plan for consolidating into a single government some or all of the governments that established the commission;

(6) To prepare drafts of any legislation necessary to effect the plan of governmental consolidation;

(7) To call a referendum, as provided in G.S. 153A-405, on the plan of governmental consolidation. (1973, c. 822, s. 1.)

§ 153A-403. Content of concurrent resolutions. — The concurrent resolutions establishing a commission shall:

(1) Set forth the purposes that are to be vested in the commission pursuant to G.S. 153A-402;

(2) Determine the composition of the commission, the manner of appointment of its members, and the manner of selection of its officers;

(3) Determine the compensation, if any, to be paid to commission members;

(4) Provide for the organizational meeting of the commission;

(5) Set out the method for determining the financial support that will be given to the commission by each of the governments establishing the commission;

(6) Set forth the date by which the commission is to complete its work;

(7) Set forth any other directions or limitations considered necessary. (1973, c. 822, s. 1.)

§ 153A-404. Powers of a commission. — A commission established pursuant to this Article may:

(1) Adopt rules and regulations for the conduct of its business;

(2) Apply for, accept, receive, and disburse funds, grants, and services made available to it by the State of North Carolina or any agency thereof, the federal government or any agency thereof, any unit of local government, or any private or civic agency;
(3) Employ personnel;
(4) Contract with consultants;
(5) Hold hearings in the furtherance of its business;
(6) Take any other action necessary or expedient to the furtherance of its business. (1973, c. 822, s. 1.)

§ 153A-405. Referendum; General Assembly action. — If authorized to do so by the concurrent resolutions that established it, a commission may call a referendum on its proposed plan of governmental consolidation. The referendum may be held on the same day as any other referendum or election in the county or counties involved, but may not otherwise be held during the period beginning 30 days before and ending 30 days after the day of any other referendum or election to be conducted by the board or boards of elections conducting the referendum and already validly called or scheduled by law.

The proposition submitted to the voters shall be substantially in one of the following forms:

(1) Shall the County of .... and the County of ... . be consolidated?
(2) Shall the City of .... and the City of .... be consolidated?
(3) Shall the City of .... be consolidated with the County of ....?

If the proposition is to consolidate two or more counties or to consolidate two or more cities, to be approved it must receive the votes of a majority of those voting in each of the counties or cities, as the case may be. If the proposition is to consolidate one or more cities with a county, to be approved it must receive the votes of a majority of those voting in the referendum. In addition, no governmental consolidation may become effective until enacted into law by the General Assembly. (1973, c. 822, s. 1.)

ARTICLE 21.

§§ 153A-406 to 153A-420: Reserved for future codification purposes.

ARTICLE 22.

§§ 153A-421 to 153A-434: Reserved for future codification purposes.

ARTICLE 23.

Miscellaneous Provisions.

§ 153A-435. Liability insurance; damage suits against a county involving governmental functions. — (a) A county may contract to insure itself and any of its officers, agents, or employees against liability for wrongful death or negligent or intentional damage to person or property or against absolute liability for damage to person or property caused by an act or omission of the county or of any of its officers, agents, or employees when acting within the scope of their authority and the course of their employment. The board of commissioners shall determine what liabilities and what officers, agents, and employees shall be covered by any insurance purchased pursuant to this subsection.

Purchase of insurance pursuant to this subsection waives the county's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. By entering into an insurance contract with the county, an insurer waives any defense based upon the governmental immunity of the county.

(b) If a county has waived its governmental immunity pursuant to subsection (a) of this section, any person, or if he dies, his personal representative, sustaining damages as a result of an act or omission of the county or any of its officers, agents, or employees, occurring in the exercise of a governmental function, may sue the county for recovery of damages. To the extent of the coverage of insurance purchased pursuant to subsection (a) of this section, governmental immunity may not be a defense to the action. Otherwise, however, the county has all defenses available to private litigants in any action brought pursuant to this section without restriction, limitation, or other effect, whether the defense arises from common law or by virtue of a statute.

Despite the purchase of insurance as authorized by subsection (a) of this section, the liability of a county for acts or omissions occurring in the exercise of governmental functions does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. The judge shall hear and determine these issues without resort to a jury, and the jury shall be absent during any motion, argument, testimony, or announcement of findings of fact or conclusions of law relating to these issues unless the defendant requests a jury trial on them. (1955, c. 911, s. 1; 1973, c. 822, s. 1.)

Governmental Immunity. — Where a county is covered by a policy of liability insurance, the question of governmental immunity from suit from injuries caused by alleged negligence does not arise with reference to the validity of a judgment of nonsuit. Cook v. County of Burke, 272 N.C. 94, 157 S.E.2d 611 (1967).

Immunity Is Not Waived as to Employees and Premises Not Included in Policy. — A policy of insurance affording protection to a county against liability caused by negligence of named personnel and employees of the county and covering listed and described premises does not waive the county's governmental immunity for negligence in the operation of a public library when the employees of the library and library premises are not included in the policy. Seibold v. City of Kinston, 268 N.C. 615, 151 S.E.2d 654 (1966).

Falling on Public Walk within Courthouse Grounds. — The liability of a county for injuries sustained by a pedestrian falling on a public walk within the courthouse grounds is no more extensive than the liability of a city to a pedestrian falling upon a public sidewalk maintained by the city. Cook v. County of Burke, 272 N.C. 94, 157 S.E.2d 611 (1967).

Jurisdiction of Federal Courts. — Former § 153-9(44), similar to this section, provided that the injured person could sue "in any court of competent jurisdiction in such county." It was held that this language did not attempt to limit jurisdiction to a State court in such county, nor to a court of such county; the United States District Court was a court of competent jurisdiction in the county. Knighton v. Johnston County, 330 F. Supp. 652 (E.D.N.C. 1971).

Even if the legislative intent was to deprive the federal court of jurisdiction, it cannot do so. Federal jurisdiction cannot be defeated by a State statute prescribing the court in which the action is to be brought. Knighton v. Johnston County, 330 F. Supp. 652 (E.D.N.C. 1971).

Complaint. — It is appropriate for the complaint to contain allegations regarding liability insurance and waiver of governmental immunity. Wilkie v. Henderson County, 1 N.C. App. 155, 160 S.E.2d 505 (1968).

Protection against prejudice is afforded by providing that no part of the pleadings relating to liability insurance shall be read or mentioned in the presence of the trial jury. Wilkie v. Henderson County, 1 N.C. App. 155, 160 S.E.2d 505 (1968).

Stated in Sides v. Cabarrus Mem. Hosp., 287 N.C. 14, 213 S.E.2d 297 (1975).

§ 153A-436. Photographic reproduction of county records. — (a) A county may provide for the reproduction, by photocopy, photograph, microphotograph, or any other method of reproduction that gives legible and permanent copies, of instruments, documents, and other papers filed with the register of deeds and of any other county records. The county shall keep each reproduction of an instrument, document, paper, or other record in a fire-resistant file, vault, or similar container. If a duplicate reproduction is made to provide a security-copy, the county shall keep the duplicate in a fire-resistant file, vault, or similar container separate from that housing the principal reproduction.

If a county has provided for reproducing records, any custodian of public records of the county may cause to be reproduced any of the records under, or coming under, his custody.

(b) If a county has provided for reproducing some or all county records, the custodian of any instrument, document, paper, or other record may permit it to be removed from its regular repository for up to 24 hours in order to be reproduced. An instrument, document, paper or other record may be removed from the county in order to be reproduced. The board of commissioners may permit an instrument, document, paper, or other record to be removed for longer than 24 hours if a longer period is necessary to complete the process of reproduction.

(c) The original of any instrument, document, or other paper received by the register of deeds and reproduced pursuant to this Article shall be filed, maintained, and disposed of in accordance with G.S. 161-17 and G.S. 121-5. The original of any other county record that is reproduced pursuant to this Article may be kept by the county or disposed of pursuant to G.S. 121-5.

(d) If an instrument, document, or other paper received by the register of deeds is reproduced pursuant to this Article, the recording of the reproduction is a sufficient recording for all purposes.

(e) A reproduction, made pursuant to this Article, of an instrument, document, paper, or other record is as admissible in evidence in any judicial or administrative proceeding as the original itself, whether the original is extant or not. An enlargement or other facsimile of the reproduction is also admissible in evidence if the original reproduction is extant and available for inspection under the direction of the court or administrative agency. (1945, c. 286, ss. 1-7; c. 944; 1951, c. 19, ss. 1-6; 1953, c. 675, ss. 23, 24; 1957, c. 330, s. 3; 1973, c. 822, s. 1.)

§ 153A-437. Assistance to historical organizations. — (a) A county or city may appropriate revenues not otherwise limited as to use by law to a local historical or preservation society, museum, or other similar organization. Before such an appropriation may be made, the recipient organization shall adopt and present to the county or city a resolution requesting the funds and describing the intended use of the funds. The funds may be used for preserving historic sites, buildings, structures, areas, or objects; for recording and publishing materials relating to the history of the area; for establishing or maintaining historical museums or projects; for paying salaries of personnel employed in such museums or projects; for the costs of acquiring, recording, and maintaining materials and equipment; and for any other purposes that are approved by the county or city and that contribute to the preservation of historic sites, buildings, structures, areas, or objects, or historic materials. The ordinance making the appropriation shall state specifically what the appropriation is to be used for, and the governing board of the county or city shall require that the recipient account for the appropriation at the close of the fiscal year.

(b) A county or city, a board of education, or the board of trustees of a public library may make available space in a building under its control to a local historical society, historical museum, or other historical organization.

(c) This section is supplemental to and does not supersede any other law. (1955, c. 371, ss. 1-4; 1957, c. 398; 1973, c. 822, s. 1.)

§ 153A-438. Beach erosion control and flood and hurricane protection works. — A county may appropriate revenues not otherwise limited as to use by law to finance the acquisition, construction, reconstruction, extension, maintenance, improvement, or enlargement of groins, jetties, dikes, moles, walls, sand dunes, vegetation, or other types of works or improvements that are designed for controlling beach erosion, for protection from hurricane floods, or for preserving or restoring facilities and natural features that afford protection to the beaches and other land areas of the county and to the life and property of the county. (1965, c. 307, s. 1; 1971, c. 1159, s. 3; 1973, c. 822, s. 1.)

§ 153A-439. Support of extension activities; personnel rules for extension employees. — A county may support the work of the North Carolina Agricultural Extension Service and for these purposes may appropriate revenues not otherwise limited as to use by law.

If a county adopts rules and regulations concerning annual leave, sick leave, hours of employment, and holidays that apply to county employees generally, these rules and regulations apply to county extension employees. Otherwise, the rules and regulations adopted by the North Carolina Agricultural Extension Service concerning these matters apply to county extension employees. (1911, c. 1; C. S., s. 1297; 1957, c. 1004, s. 5; 1973, c. 822, s. 1.)

§ 153A-440. Promotion of soil and water conservation work. — A county may cooperate with and support the work of the Federal Soil Conservation Service and the State and local soil and water conservation agencies and districts and for these purposes may appropriate revenues not otherwise limited as to use by law. (1959, c. 1213; 1961, cc. 266, 290, 301, 579, 581, 582, 584, 656, 693, 705, 809, 1126; 1963, cc. 290, 701; 1965, cc. 531, 702; 1967, c. 319; 1969, c. 64, s. 1; c. 174, s. 1; c. 1003, s. 1; 1973, c. 822, s. 1.)

§ 153A-441. County surveyor. — A county may appoint a person registered as a land surveyor pursuant to Chapter 89 as county surveyor. (Const., art. 7, s. 1; Rev., s. 4296; C. S., s. 1383; 1959, c. 1237, s. 1; 1973, c. 822, s. 1.)

§ 153A-442. Animal shelters. — A county may establish, equip, operate, and maintain an animal shelter or may contribute to the support of an animal shelter, and for these purposes may appropriate funds not otherwise limited as to use by law. (1973, c. 822, s. 1.)

§ 153A-443. Redesignation of site of "courthouse door," etc. — If a county determines that the traditional location of the "courthouse," the "courthouse door," the "courthouse bulletin board" or the "courthouse steps" has become inappropriate or inconvenient for the doing of any act or the posting of any notice required by law to be done or posted at such a site, the county may by ordinance designate some appropriate or more convenient location for the site. The board of commissioners shall cause such an ordinance to be published at least once within 30 days after the day it is adopted and shall cause a copy of it to be posted for 60 days at the traditional location. (1973, c. 822, s. 1.)

§ 153A-444. Parks and recreation. — A county may establish parks and provide recreational programs pursuant to Chapter 160A, Article 18. (1973, c. 822, s. 1.)

§ 153A-445. Miscellaneous powers found in Chapter 160A. — (a) A county may take action under the following provisions of Chapter 160A:

(1) Chapter 160A, Article 20, Part 1. — Joint Exercise of Powers.
(2) Chapter 160A, Article 20, Part 2. — Regional Councils of Governments.
(3) G.S. 160A-487. — Financial support for rescue squads.
(4) G.S. 160A-488. — Art galleries and museums.
(5) G.S. 160A-489. — Human relations programs.

(b) This section is for reference only, and the failure of any section of Chapter 160A to appear in this section does not affect the applicability of that section to counties. (1973, c. 822, s. 1; 1975, c. 19, s. 61.)

Cross Reference. — As to authority of counties, cities and towns to appropriate money for payment to the North Carolina Association of County Commissioners and the North Carolina League of Municipalities for the purpose of financing a local government center in the City of Raleigh, see § 160A-495.

Editor's Note. — The 1975 amendment corrected an error in the 1973 act by substituting "Article 20" for "Article 21" in subdivision (2) of subsection (a).

The reference to § 160A-489 in subdivision (5) should be to § 160A-492.

§ 153A-446. County may offer reward for information as to persons damaging county property. — The board of county commissioners is authorized to offer and pay rewards in an amount not exceeding five hundred dollars ($500.00) for information leading to the arrest and conviction of any person who willfully defaces, damages or destroys, or commits acts of vandalism or larceny of any county property. The amount necessary to pay said rewards shall be an item in the current expense budget of the county. (1975, c. 258.)

Chapter 154.

County Surveyor.

§§ 154-1, 154-2: Repealed by Session Laws 1973, c. 822, s. 5.

Cross References. — As to the effect of the repeal, see the editor's note following the analysis to Chapter 153A. For present provisions as to county surveyors, see § 153A-441.

§ 154-3: Repealed by Session Laws 1969, c. 1003, s. 8.

Chapter 155.

County Treasurer.

§§ 155-1 to 155-8: Repealed by Session Laws 1971, c. 780, s. 34.

§ 155-9: Repealed by Session Laws 1953, c. 973, s. 3.

§§ 155-10 to 155-14: Repealed by Session Laws 1971, c. 780, s. 34.

§ 155-15: Repealed by Session Laws 1953, c. 973, s. 3.

§§ 155-16 to 155-18: Repealed by Session Laws 1971, c. 780.

Chapter 156.

Drainage.

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SUBCHAPTER IV. DRAINAGE BY COUNTIES.

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SUBCHAPTER I. DRAINAGE BY INDIVIDUAL OWNERS.

ARTICLE 1.

Jurisdiction in Clerk of Superior Court.

Part 1. Petition by Individual Owner.

§ 156-1. Name of proceeding. — The proceeding under this Subchapter shall be the same as prescribed in the Chapter Eminent Domain, Article 2, Condemnation Proceedings. (Code, s. 1324; Rev., s. 4028; C. S., s. 5260.)

Local Modification. — Alexander, Little River Drainage District: Pub. Loc. 1927, c. 484; Iredell: Pub. Loc. 1937, c. 591; Pasquotank: Pub. Loc. 1923, c. 181; Pub. Loc. 1927, c. 264; Pub. Loc. 1929, c. 471; Robeson: Pub. Loc. 1927, c. 197; Rowan: Pub. Loc. 1937, cc. 591, 592; Tyrrell: Pub. Loc. 1927, c. 336; city of Washington: Pr. 1921, c. 149.

Cross Reference. — As to condemnation proceedings, see § 40-11 et seq.

Editor's Note. — For note on disposition of diffused surface waters in North Carolina, see 47 N.C.L. Rev. 205 (1968).

Constitutionality. — The laws codified as this and the following sections of this Chapter, are constitutional. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910); Forehand v. Taylor, 155 N.C. 353, 71 S.E. 433 (1911). They come within the power of the State for police regulations. Winslow v. Winslow, 95 N.C. 24 (1886). See Porter v. Armstrong, 139 N.C. 179, 51 S.E. 926 (1905).

Various Statutes Harmonized. — While the various statutes for the drainage of swamplands in Eastern North Carolina have not the same provisions in all respects, they have been collected and are to be found in this Chapter and should be construed to harmonize, and constitute, with such variations, a system of drainage laws for the State. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908); Sawyer Canal Co. v. Keys, 234 N.C. 360, 67 S.E.2d 259 (1951).

Statutes Provide Flexible Procedure. — The statutes authorizing the creation, maintenance and improvements of drainage districts provide flexible procedure which may be modified and molded by decrees from time to time to promote the beneficial objects sought by the creation of the district, subject to the restrictions that there should be no material change nor any change that would impose additional costs upon landowners except to the extent of benefits to them. In re Lyon Swamp Drainage & Levee Dist., 228 N.C. 248, 45 S.E.2d 130 (1947).

Commissioners May Issue Bonds and Make Assessments Applicable Only to Section Benefited. — Where proposed improvements and repairs will primarily benefit lands embraced in one section of a drainage district and would be of no substantial benefit to landowners in another section thereof, the drainage commissioners have power under statutory authority to issue bonds and make assessments applicable only to the section benefited. In re Lyon Swamp Drainage & Levee Dist., 228 N.C. 248, 45 S.E.2d 130 (1947).

The correct procedure to secure additional authority for proper maintenance and improvements in a drainage district is by motion or petition in the original cause. In re Lyon Swamp Drainage & Levee Dist., 228 N.C. 248, 45 S.E.2d 130 (1947).

Right to Condemn. — The right of the State to condemn land for drains rests on the same foundation as its right in cases of public roads, mills, railroads, schoolhouses, etc. Norfleet v. Cromwell, 70 N.C. 634 (1874).

The right to drain through the banks of a natural watercourse is exactly similar in character to the right to construct dykes or levees to keep their excessive waters from overflowing the adjacent lands, a right which has been recognized in the legislation of all countries from the most ancient times. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910).

Stated in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

Cited in Chappell v. Winslow, 258 N.C. 617, 129 S.E.2d 101 (1963); Taylor v. Askew, 17 N.C. App. 620, 195 S.E.2d 316 (1973).

§ 156-2. Petition filed; commissioners appointed. — Any person owning pocosin, swamp, or flatlands, or owning lowlands subject to inundation, which cannot be conveniently drained or embanked so as to drain off or dam out the water from such lands, except by cutting a canal or ditch, or erecting a dam through or upon the lands of other persons, may by petition apply to the superior court of the county in which the lands sought to be drained or embanked or some part of such lands lie, setting forth the particular circumstances of the case, the situation of the land to be drained or embanked, to what outlet and through whose lands he desires to drain, or on what lands he would erect his dam, and who are the proprietors of such lands; whereupon a summons shall be served on each of the proprietors, and, on the hearing of the petition the court shall appoint three persons as commissioners, who shall be duly sworn to do justice between the parties. (1795, c. 436, P. R.; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 1; Code, s. 1297; Rev., s. 3983; C. S., s. 5261.)

The clerk of the superior court has jurisdiction of a proceeding to obtain a right of drainage over the land of an adjoining landowner, and to assess damages, etc. Durden v. Simmons, 84 N.C. 555 (1881).

Formerly the law required the appointment of disinterested freeholders as commissioners in a proceeding to obtain a right of drainage over the lands of an adjoining landowner. Durden v. Simmons, 84 N.C. 555 (1881).

This Chapter, and the amendments thereto, are the charts which should guide the commissioners, and their decisions, findings and report should conform thereto. Porter v. Armstrong, 139 N.C. 179, 51 S.E. 926 (1905).

Appeal. — An order in a drainage proceeding directing matters proper for the determination of the commissioners to be referred to a jury is appealable. Porter v. Armstrong, 134 N.C. 447, 46 S.E. 997 (1904).

Artificial Outlets. — This Chapter applies only to artificial outlets made over the land of another to reach a natural watercourse. Mizell v. McGowan, 129 N.C. 93, 39 S.E. 729 (1901).

Readjustment. — When the rights and duties of adjoining landowners as to drainage in a certain canal have been determined under this Chapter, and judgment entered, proceedings subsequently brought for the purpose of readjustment, owing to change of ownership and partition, etc., are in effect a motion in the cause, in which the judgment, unlike a final judgment, is not conclusive; and the cause can be brought forward from time to time, upon notice to the parties, and further decrees made to conform to the exigencies and changes which may arise. Staton v. Staton, 148 N.C. 490, 62 S.E. 596 (1908); Sawyer Canal Co. v. Keys, 234 N.C. 360, 67 S.E.2d 259 (1951).

Jury Question. — See Heirs at Law of Collins v. Heirs at Law of Haughton, 26 N.C. 420 (1844).

Joint Petition. — Two or more separate proprietors cannot sustain a joint petition for a ditch to drain their lands, without alleging that a common ditch would drain the lands of all the petitioners. Shaw v. Burfoot, 53 N.C. 344 (1861).

Diversion of Water. — Water cannot be diverted from its natural course so as to damage another, but it may be increased and accelerated. Hocutt v. Wilmington & W.R.R., 124 N.C. 214, 32 S.E. 681 (1899); Mizell v. McGowan, 125 N.C. 439, 34 S.E. 538 (1899); Lassiter v. Norfolk & C.R.R., 126 N.C. 509, 36 S.E. 48 (1900); Mizell v. McGowan, 129 N.C. 93, 39 S.E. 729 (1901); Barcliff v. Norfolk S.R.R., 168 N.C. 268, 84 S.E. 290 (1915).

The owners of swamps, whose waters naturally flow into natural watercourses, can make such canals as are necessary to drain them of the water naturally flowing therein, although in doing so the flow of water in the natural watercourse is increased and accelerated so that the water is discharged on the land of an abutting owner. Mizell v. McGowan, 120 N.C. 134, 26 S.E. 783 (1897).

Liability for Damages for Diversion. — Where a person diverts water from a stream by cutting a channel from it, and at a point lower down the stream turns it back into the old channel, and by its own momentum it is carried on to the lands of an adjoining owner, he is liable for damages. Briscoe v. Young, 131 N.C. 386, 42 S.E. 893 (1902).

One is liable for damages caused to the lands of another by his diverting the natural flow of surface water thereto. Roberts v. Baldwin, 151 N.C. 407, 66 S.E. 346 (1909).

Surface waters should be drained so as to be carried off in the due course of nature. The upper proprietor is liable in damages to the land of the lower proprietor caused by water diverted by his ditches and not carried to a natural waterway. Briscoe v. Parker, 145 N.C. 14, 58 S.E. 443 (1907).

Landowner's Remedy. — When the lands of the lower proprietor are damaged by the improper drainage of the upper proprietor, he may elect to bring an action for damages or proceed under this and the following sections. Briscoe v. Parker, 145 N.C. 14, 58 S.E. 443 (1907).

Setting Aside Former Judgment. — If a former judgment in a similar proceeding has not been pleaded in an action for drainage of lands, as an estoppel or res adjudicata, before final judgment, the party relying thereon must move the court within one year to set the judgment aside for excusable mistake or inadvertence. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908).

Landowner Must Be Made Party. — An order by county commissioners (now superior court) appointing appraisers to assess the value of the benefits and damages which would accrue to the owner of land on account of a certain canal sought to be cut through his land, upon the petition of other parties, filed under the provisions of this Chapter, is void, unless said landowner be made a party to the petition. Gamble v. McCrady, 75 N.C. 509 (1876).

Liability to Maintain Artificial Waterway Constructed for Temporary Purposes. — When an upper proprietor of lands constructs and maintains for his own use and advantage an artificial waterway or structure affecting the flow of water, without invading the rights of the lower proprietor, for a temporary purpose or a specific purpose which he may at any time abandon, the upper proprietor comes under no obligation to maintain the structure, though the incidental effect has been to confer a benefit on the lower tenant. Lake Drummond Canal & Water Co. v. Burnham, 147 N.C. 41, 60 S.E. 650 (1908).

Where separate owners have derived their lands subject to a drainage system placed upon the entire tract by the original owner, each one using the system must bear the costs of maintenance and repair required by the portion of the system on his own premises. Lamb v. Lamb, 177 N.C. 150, 98 S.E. 307 (1919).

Quoted in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

Cited in In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

§ 156-3. Duty of commissioners. — The commissioners, or a majority of them, on a day of which each proprietor of land aforesaid is to be notified at least five days, shall meet on the premises and view the lands to be drained or embanked, and the lands through or on which the drain is to pass or the embankment to be erected, and shall determine and report whether the lands of the petitioner can be conveniently drained or embanked except through or on the lands of the defendants or some of them; and if they are of opinion that the same cannot be conveniently done except through or on such lands, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth or height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage or embankment of the water from the petitioner's land, and also securing the defendant's lands from inundation, and every other injury to which the same may be probably subjected by such canal, ditch, or embankment; and they shall assess, for each of the defendants, such damage as in their judgment willfully indemnify him for the use of his land in the mode proposed; but in assessing such damages, benefits shall be deducted. (1795, c. 436, P. R.; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 2; Code, s. 1298; Rev., s. 3984; C. S., s. 5262.)

Section Not Repealed. — Section 156-16, concerning the drainage of lowlands, does not expressly repeal this section, but leaves in operation such of the provisions as are not repugnant to such section. Worthington v. Coward, 114 N.C. 289, 19 S.E. 154 (1894).

Stated in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

Cited in Porter v. Armstrong, 134 N.C. 447, 46 S.E. 997 (1904); In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

§ 156-4. Report and confirmation; easement acquired; exceptions. — The commissioners shall report in writing, under their hands, the whole matter to the court, which shall confirm the same, unless good cause be shown to the contrary; and on payment of the damages and cost of the proceedings the court shall order and decree that the petitioner may cut the canal or ditch, or raise the embankment in the manner reported and determined by the commissioners; and thereupon the petitioner shall be seized in fee simple of the easement aforesaid: Provided, that, without the consent of the proprietor, such canal, ditch, or embankment shall not be cut or raised through or on his yard or curtilage, nor be allowed when the same shall injure any mill, by cutting off or stopping the water flowing thereto; nor shall such dam be allowed so as to create a nuisance by stagnant water, or cut off the flow of useful springs or necessary streams of water, or stop any ditches of such proprietor when there is no freshet. (1795, c. 436, s. 2, P. R.; 1835, c. 7; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 3; Code, s. 1299; Rev., s. 3985; C. S., s. 5263.)

Report of Commissioners Conclusive. — The report of commissioners appointed to condemn lands and assess damages for the purpose of drainage is, like the verdict of a jury, conclusive of the facts therein ascertained, until set aside. Norfolk S.R.R. v. Ely, 101 N.C. 8, 7 S.E. 476 (1888).

Commissioners' Report Set Aside. — Where judge set aside report of commissioners because it did not comply with the statute, and further found as a fact in his order that two of the commissioners had been guilty of gross indiscretion, the Supreme Court would not reverse his order, whether the report conformed to the statute or not. Porter v. Armstrong, 139 N.C. 179, 51 S.E. 926 (1905).

Jury to Settle Issues of Fact. — Upon an application to condemn lands for the purpose of drainage, the issue of fact raised by the pleadings should be framed and settled by a jury; they cannot be raised or considered upon exceptions to the report of the commissioners appointed to assess damages. Norfolk S.R.R. v. Ely, 101 N.C. 8, 7 S.E. 476 (1888).

Title in Lands Condemned. — When, upon the petition of one or more parties, under this section, leave was granted by the county court to cut a canal across the land of another for the purposes of drainage, the petitioners and their assignees, upon the report of the jury provided for in the statute being confirmed, acquire not merely an easement, but title in fee to the land condemned. Norfleet v. Cromwell, 70 N.C. 634 (1874).

Appeal from Judgment of Clerk. — On appeal from the judgment of the clerk upon the report of commissioners appointed to lay off ditch for drainage of lowlands the judge could set aside the report either for cause or in his discretion, if in his opinion the ends of justice could be subserved by that course. Worthington v. Coward, 114 N.C. 289, 19 S.E. 154 (1894).

Quoted in In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

Stated in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-5. Width of right-of-way for repairs. — The commissioners, when they may deem it necessary, shall designate the width of the land to be left on each side of the canal, ditch, or dam, to be used for the protection and reparation thereof, which land shall be altogether under the control and dominion of the owner of the canal, ditch, or dam, except as aforesaid: Provided, that in no case shall a greater width of land on both sides, inclusive of a dam, be taken than five times the base of such dam. (R. C., c. 40, s. 6; Code, s. 1302; Rev., s. 3985a; C. S., s. 5264.)

When Unnecessary Amount of Land Condemned. — Where, upon an appeal from the report of the commissioners, the jury found that the amount of land condemned by them for the purpose of the protection and reparation of the ditches was unnecessary, it was proper for the court to remand the cause, with directions to constitute another commission. Winslow v. Winslow, 95 N.C. 24 (1886).

§ 156-6. Right of owner to fence; entry for repairs. — Any proprietor, through or on whose land such canal or ditch may be cut or embankment raised, may put a fence or make paths across the same, provided the usefulness thereof be not impaired; and the owner of the canal, ditch, or dam, his heirs and assigns, shall at all times have free access to the same for the purpose of making and repairing them; doing thereby no unnecessary damage to the lands of the proprietors. (1795, c. 436, s. 2, P. R.; 1835, c. 7; 1852, c. 57, ss. 1, 2; R. C., c. 40, s. 4; Code, s. 1300; Rev., s. 3986; C. S., s. 5265.)

§ 156-7. Earth for construction of dam; removal of dam. — The earth necessary for the erection of a dam may be taken from either side of it, or wherever else the commissioners may designate and allow. And such dam may be removed by the proprietor of the land, his heirs or assigns, to any other part of his lands, and he may adjoin any dam of his own thereto, if allowed by the court on a petition and such proceedings therein as are provided in this Chapter, as far as the same may apply to his case: Provided always, that the usefulness of the dam will not be thereby impaired or endangered. (R. C., c. 40, s. 5; Code, s. 1301; Rev., s. 3987; C. S., s. 5266.)

§ 156-8. Earth from canal removed or leveled. — The earth excavated from the canal or ditch shall be removed away or leveled as nearly as may be with the surface of the adjacent land, unless the commissioners shall otherwise specially allow. (R. C., c. 40, s. 7; Code, s. 1303; Rev., s. 3988; C. S., s. 5267.)

§ 156-9. No drain opened within 30 feet. — The proprietor of any swamp or flatlands through which a canal or ditch passes shall not have a right to open or cut any drain within 30 feet thereof but by the consent of the owner. Such proprietor, however, and other persons may cut into such canal or ditch in the manner hereinafter provided. (R. C., c. 40, s. 8; Code, s. 1304; Rev., s. 3989; C. S., s. 5268.)

§ 156-10. Right to drain into canal. — Any person desirous of draining into the canal or ditch of another person as an outlet may do so in the manner hereinbefore provided, and in addition to the persons directed to be made parties, all others shall be parties through whose lands, canals, or ditches the water to be drained may pass till it shall have reached the furthest artificial outlet. And the privilege of cutting into such canal or ditch may be granted under the same rules and upon the same conditions and restrictions as are provided in respect to cutting the first canal or ditch: Provided, that no canal or ditch shall be allowed to be cut into another if thereby the safety or utility of the latter shall be impaired or endangered: Provided, further, that if such impairing and danger can be avoided by imposing on the petitioner duties or labor in the enlarging or deepening of such canal or ditch, or otherwise, the same may be done; but no absolute decree for cutting such second canal or ditch shall pass till the duties or work so imposed shall be performed and the effect thereof is seen, so as to enable the commissioners to determine the matter whether such second canal or ditch ought to be allowed or not: Provided, that any party to the proceeding may appeal from the judgment of the court rendered under this section to the superior court of the county, where a trial and determination of all issues raised in the pleadings shall be had as in other cases before a judge and jury. (R. C., c. 40, s. 9; Code, s. 1305; 1887, c. 222; Rev., s. 3990; C. S., s. 5269; 1973, c. 108, s. 94.)

Adjudication of Rights of Parties. — In a proceeding by drainage corporation to levy assessments against the lands of respondents for the proportionate part of the expense for making necessary improvements upon allegations that such lands drained into the corporations' canals and would be greatly benefited by the improvements, it appeared that respondents' predecessor in title cut a large canal through his lands draining into the lands of the corporation. It was held that it would be presumed that respondents' predecessor in title acquired the right to cut into the canal of plaintiff pursuant to the provisions of this section and the petition should be considered as a motion in that cause for the proper adjudication of the rights of the parties. Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

Stated in Sawyer Canal Co. v. Keys, 234 N.C. 360, 67 S.E.2d 259 (1951).

Cited in Brooks v. Tucker, 61 N.C. 309 (1867); In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

§ 156-11. Expense of repairs apportioned. — Besides the damages which the commissioners may assess against the petitioner for the privilege of cutting into such canal or ditch, they shall assess and apportion the labor which the petitioner and defendants shall severally contribute towards repairing the canal or ditch into or through which the petitioner drains the water from his lands, and report the same to court; which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors and administrators, heirs and assigns. (R. C., c. 40, s. 10; Code, s. 1306; Rev., s. 3991; C. S., s. 5270.)

When Report Fatally Defective. — A report of commissioners under this section, which fails to assess and apportion that part of the labor which is to be contributed by the defendants, is fatally defective. Brooks v. Tucker, 61 N.C. 309 (1867).

Applied in Worthington v. Coward, 114 N.C. 289, 19 S.E. 154 (1894).

Quoted in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-12. Notice of making repairs. — Whenever the canals or ditches for the reparation of which more than one person shall be bound under the provisions of G.S. 156-11 shall need to be repaired, any of the persons so bound may notify the others thereof, and of the time he proposes to repair the same; and thereupon each of the persons shall jointly work on the same and contribute his proportion of labor till the same be repaired or the work cease by consent. (R. C., c. 40, s. 11; Code, s. 1307; Rev., s. 3992; C. S., s. 5271.)

Stated in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-13. Judgment against owner in default; lien. — In case the person so notified shall make default, any of the others may perform his share of labor and recover against him the value thereof, on a notice to be issued for such default, in which shall be stated on oath made before the clerk the value of such labor, and unless good cause to the contrary be shown on the return of the notice, the court shall render judgment for the same with interest and costs; which judgment shall be a lien upon the lands from the date of the performance of the work. (R. C., c. 40, s. 12; Code, s. 1308; 1899, c. 396; Rev., s. 3993; C. S., s. 5272.)

Notice to Landowner. — Before any specific amount may be adjudged against a landowner as a lien on his land he is entitled to be heard, after notice, as to whether the assessment made by the commissioners was unjust or oppressive. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908).

Quoted in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

Cited in Craft & Bergeson v. John L. Roper Lumber Co., 181 N.C. 29, 106 S.E. 138 (1921).

§ 156-14. Subsequent owners bound. — All persons to whom may descend, or who may otherwise own or occupy lands drained by any canal or ditch, for the privilege of cutting which any labor for repairing is assessed, shall contribute the same, and shall be bound therefor to all intents and purposes, and in the same manner and by the same judgment as the original party himself would be if he occupied the land. (R. C., c. 40, s. 13; Code, s. 1309; Rev., s. 3994; C. S., s. 5273.)

Applied in Norfleet v. Cromwell, 70 N.C. 634 (1874); Craft & Bergeson v. John L. Roper Lumber Co., 181 N.C. 29, 106 S.E. 138 (1921).

Quoted in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-15. Amount of contribution for repair ascertained. — Whenever there shall be a dam, canal, or ditch, in the repairing and keeping up of which two or more persons shall be interested and receive actual benefit therefrom, and the duties and proportion of labor which each one ought to do and perform therefor shall not be fixed by agreement or by the mode already in this Subchapter provided for assessing and apportioning such labor, any of the parties may have the same assessed and apportioned by applying to a magistrate, who shall give all parties at least three days' notice, and shall summon two disinterested freeholders who, together with the magistrate, shall meet on the premises and assess the damages sustained by the applicant, whereupon the magistrate shall enter judgment in favor of the applicant for damages or for work done on such ditch or lands. (R. C., c. 40, s. 14; Code, s. 1310; 1889, c. 101; Rev., s. 3995; C. S., s. 5274; 1973, c. 108, s. 95.)

Constitutionality. — This section is constitutional and valid. Forehand v. Taylor, 155 N.C. 353, 71 S.E. 433 (1911).

Proceeding under this section is in effect a motion in the cause which can be brought forward from time to time, upon notice to all the parties to be affected, for orders in the cause, to promote the objects of the proceeding, the whole matter remaining in the control of the court. Staton v. Staton, 148 N.C. 490, 62 S.E. 596 (1908); Sawyer Canal Co. v. Keys, 234 N.C. 360, 67 S.E.2d 259 (1951).

Action Dismissed for Noncompliance with Statute Not Bar to Second Action. — When damages have been sought in an action before a justice of the peace (now magistrate), relating to drainage districts, etc., and the action was dismissed because there had been no contract or agreement between the parties and the requirements of the statute had not been met, the plaintiff is not thereby barred from proceeding under the act to have the damages assessed and from bringing another action therefor as the former judgment does not bar the second one. Forehand v. Taylor, 155 N.C. 353, 71 S.E. 433 (1911).

Enlarging or Deepening Canal. — The method by which the user of a canal by prescriptive right may enlarge or deepen it with an apportionment of the costs, is provided by this section. Armstrong v. Spruill, 182 N.C. 1, 108 S.E. 300 (1921).

Liability for Damages. — Where the users of a canal by prescriptive right enlarge the same, and thereby place water upon the lower proprietor to his damage, they are liable therefor, and, upon conflicting evidence, the issue should be submitted to the jury. Armstrong v. Spruill, 182 N.C. 1, 108 S.E. 300 (1921).

Applied in Porter v. Durham, 98 N.C. 320, 3 S.E. 832 (1887).

Cited in Craft *&* Bergeson v. John L. Roper Lumber Co., 181 N.C. 29, 106 S.E. 138 (1921).

§ 156-16. Petition by servient owner against dominant owner. — Any person owning lands lying upon any creek, swamp, or other stream not navigable, which are subject to inundation and which cannot be conveniently drained or embanked on account of the volume of water flowing over the same from lands lying above, and by draining the same the lands above will be benefited and better drained, such person may by petition apply to the superior court of the county in which the lands sought to be drained or embanked, or some part of such lands, lie, setting forth the particular circumstances of the case, the valuation of the lands to be drained or embanked, and what other lands above would be benefited, and who are the proprietors of such lands; whereupon a summons shall be served upon each of the proprietors, who are not petitioners, requiring them to appear before the court at a time to be named in the summons, which shall not be less than 10 days from the service thereof, and upon such day the petition shall be heard and the court shall appoint three persons as commissioners, who shall, before entering upon the discharge of their duties, be sworn to do justice between the parties. (1889, c. 253; Rev., s. 4016; C. S., s. 5275.)

Local Modification. — Lenoir: 1891, c. 73; Rev., s. 4016.

This section does not repeal § 156-3, but leaves in operation such of the provisions as are not repugnant to it. Worthington v. Coward, 114 N.C. 289, 19 S.E. 154 (1894).

Analogy to General Drainage Law. — The procedure under this and the following sections is analogous to the general drainage law, and its provisions are applicable, and the proceedings are regarded as kept alive for further orders without being retained on the docket, and in this case the original assessment did not constitute a bar to the motion to vacate, and the assessment was properly set aside on the facts found. Spence v. Granger, 204 N.C. 247, 167 S.E. 805 (1933).

Setting Aside Judgment. — In an action brought for the drainage of lands under this and the following sections, the judgment upon motion thereafter will not be set aside merely upon the ground that a similar proceeding had been prosecuted to judgment between several of the parties. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908).

§ 156-17. Commissioners to examine lands and make report. — The commissioners, or a majority of them, on a day of which each proprietor is to be notified at least five days, shall meet on the premises and view the land to be drained and the lands affected thereby, and shall determine and report whether the lands of the petitioner or petitioners ought to be drained exclusively by him or them, and if they are of the opinion that the same ought not to be drained exclusively at the expense of the petitioner or petitioners, they shall decide and determine the route of the canal, ditch, or embankment, the width thereof, and the depth and height, as the case may be, and the manner in which the same shall be cut or thrown up, considering all the circumstances of the case, and providing as far as possible for the effectual drainage of the petitioner's land, and the protection and benefit of the defendant's lands; and they shall apportion the labor to be done or assess the amount to be paid by each of the owners of the lands affected by such canal, ditch, or embankment, towards the construction and keeping the same in repair, and report the same to the court, which, when confirmed, shall stand as a judgment of the court against each of the parties, his executors, administrators, heirs and assigns. (1889, c. 253, s. 2; Rev., s. 4017; C. S., s. 5276.)

Local Modification. — Beaufort, Lenoir: 1891, c. 73, s. 2; Rev., s. 4017; Pub. Loc. 1911, c. 545.

Cost of Work Not Required in Report. — The cost of the work to be done in the drainage of lands is not required under this section, and cannot, for its uncertainty of amount, be set out in the report of the commissioners appointed. It is a compliance with the statutes when the portion of the work to be done by the landowners is set out. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908).

§ 156-18. Cost of repairs enforced by judgment. — Whenever any such ditch, canal, or embankment shall need repairs or cleaning out, and any of the parties interested therein refuse to perform the labor apportioned to them, or refuse to contribute the amount assessed against them, the same shall be enforced in the manner hereinbefore provided for the joint repair of canals and ditches. (1889, c. 253, s. 3; Rev., s. 4018; C. S., s. 5277.)

Cross Reference. — See § 156-13 and note thereto.

§ 156-19. Obstructing canal or ditch dug under agreement. — Where two or more persons have dug a canal or ditch along any natural drain or waterway under parol agreement, or otherwise, wherein all the parties shall have contributed to the digging thereof, if any servient or lower owner shall fill up or obstruct said canal or ditch without the consent of the higher owners and without providing other drainage for the higher lands, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars ($50.00) or imprisoned not more than 30 days. (1899, c. 255; Rev., s. 3375; C. S., s. 5278.)

This section applies only where all the parties contributed under a valid agreement to the lawful digging of a ditch or canal. Porter v. Armstrong, 129 N.C. 101, 39 S.E. 799 (1901).

§ 156-20. Right of dominant owner to repair. — In the absence of any agreement for maintaining the efficiency of such ditch or canal, or should the servient owner neglect or refuse to clean out or aid in cleaning out the same through his lands, it shall be lawful for the dominant or higher owner, after giving three days' notice to the servient owner, to enter along such canal and not more than 12 feet therefrom and clean out or remove obstructions or accumulated debris therefrom at his own personal expense or without cost to the servient owner. (1899, c. 255, s. 2; Rev., s. 4025; C. S., s. 5279.)

Where a person enlarges a canal on the lands of another, under a void proceeding, he is a trespasser, and cannot claim credit for money spent thereon. Porter v. Armstrong, 129 N.C. 101, 39 S.E. 799 (1901).

Cited in Elder v. Barnes, 219 N.C. 411, 14 S.E.2d 249 (1941).

§ 156-21. Canal maintained for seven years presumed a necessity; drainage assessments declared liens. — After a canal has been dug along any natural depression or waterway and maintained for seven years, it shall be prima facie evidence of its necessity, and upon application to the clerk of the superior court of any landowner who is interested in maintaining the same, it shall be the duty of the clerk of the superior court to appoint and cause to be summoned three disinterested and discreet freeholders, who, after being duly sworn, shall go upon the lands drained or intended to be drained by such canal, and after carefully examining the same and hearing such testimony as may be introduced touching the question of cost of canal, the amount paid, and the advantages and disadvantages to be shared by each of the parties to the action, shall make their report in writing to the clerk of the superior court stating the facts and apportioning the cost of maintaining such canal among the parties to the action, and the cost of the action shall be divided in the same ratio; and their report when approved shall be properly registered by the clerk and the said report or reports shall, when filed in the office of the clerk of the superior court, be a lien upon each tract of land embraced in said report or reports to the extent of the proportionate part of the costs stipulated in said report or reports as a charge against same, and shall have the effect and force of a judgment thereon, and such judgments shall be subject to execution and collection as in cases of other judgments. (1899, c. 255, s. 3; Rev., s. 4026; 1917, c. 248, s. 1; C. S., s. 5280; 1931, c. 227, s. 1.)

Construction of Section. — The provisions of this section are necessary for the cultivation and improvements of lowlands required to be drained, and should be construed to carry into effect its beneficent purposes, when practicable. Ange & Forest v. Atlantic Coast Line R.R., 159 N.C. 547, 75 S.E. 796 (1912).

This section should be construed in connection with the other sections of the Chapter relating to the drainage of lowlands. Ange & Forest v. Atlantic Coast Line R.R., 159 N.C. 547, 75 S.E. 796 (1912).

"Ditch"; "Canal". — In the Chapter relating to the drainage of lowlands the terms "ditch" and "canal" are used indiscriminately to designate an artificial drain. Ange & Forest v. Atlantic Coast Line R.R., 159 N.C. 547, 75 S.E. 796 (1912).

An artificial drain in some places from 3 to 5 feet wide and from 2 to 5 feet deep, made for the purpose of cultivating and improving lowlands by draining them is a canal within the meaning of this section. Ange & Forest v. Atlantic Coast Line R.R., 159 N.C. 547, 75 S.E. 796 (1912).

Contribution to Original Construction. — It is not necessary that the owner of lands lying along a drainage canal, within the meaning of this section shall have contributed to its original construction to make him liable to assessments for its maintenance under the provisions of the statute. Ange & Forest v. Atlantic Coast Line R.R., 159 N.C. 547, 75 S.E. 796 (1912).

Railroads. — While a railroad company may not be the absolute owner of lands in fee, they have the proprietorship and control of those constituting its rights-of-way; and when these lands are benefited by a canal which comes within the meaning of this section, the provision of the statute relative to the maintenance of the canal applies. Ange & Forest v. Atlantic Coast Line R.R., 159 N.C. 547, 75 S.E. 796 (1912).

Applied in Craft & Bergeson v. John L. Roper Lumber Co., 181 N.C. 29, 106 S.E. 138 (1921).

§ 156-22. Supplemental assessments to make up deficiency; vacancy appointments of assessment jurors. — The freeholders, commissioners or jurors, appointed in any application or proceeding filed or instituted under G.S. 156-21 or any other section of Article 1 of this Chapter, are authorized and empowered during the establishment of and providing for the construction, maintenance and payment therefor, of such ditch, canal or drain, to make other and further assessments for the costs of establishment, construction and expense, when it shall be determined by the clerk of the court that the provisions in the former report for the payment thereof are insufficient, and that such supplementary reports shall be made on the same basis of an equitable and just proportion, as made in the former report, which report or reports shall be filed with the clerk of the superior court and have the same force and effect as the former or original report.

In case of death, resignation, removal or for any other cause there becomes a vacancy as to the freeholders, commissioners or jurors, appointed to carry out the provisions of the sections contained in this Chapter, the clerk of the superior court is authorized to fill such vacancy by the appointment of some disinterested freeholder in the county, and the said person so appointed to fill such vacancy shall qualify before the clerk of the superior court before entering upon his duties. (1931, c. 227, s. 2.)

Local Modification. — Duplin: 1931, c. 227, s. 2.

Interested Parties Entitled to Notice. — Where drainage assessments are levied against lands under this and related sections, either original assessments or additional assessments to cover unforeseen expenses in the construction of the drainage ditch, the parties whose lands are assessed are entitled to notice and an opportunity to be heard. Spence v. Granger, 207 N.C. 19, 175 S.E. 824 (1934).

§ 156-23. Easement of drainage surrendered. —If any persons, or those claiming through or under them, who have cut any ditch or canal into which any other person has been permitted to drain land under any proceeding authorized in this Subchapter, shall desire to surrender their easement or right in such ditch or canal and be discharged from any judgment rendered and existing under such proceedings, such persons may on motion have such proceeding reinstated for hearing and file a petition therein setting forth such fact or any other grounds for relief thereunder, and upon proof satisfactory to the court that such petitioners have cut another ditch or canal which drains their lands formerly drained by the first ditch or canal, and have abandoned the use of it for any purpose of drainage, the court shall adjudge the easement or right of the petitioners surrendered and determined, and from that time the petitioners and their land shall forever be discharged and released from the judgment heretofore rendered in such former proceedings: Provided, however, that all parties then having an easement or right in such ditch or canal shall be served with notice of such petition 20 days before the hearing thereof. (1887, c. 222, s. 3; Rev., s. 4027; C. S., s. 5281.)

§ 156-24. Obstructing drain cut by consent. — If any person shall stop or in any way obstruct the passage of the water in any ditch or canal having been cut through lands of any person by consent of the owner of said land, before giving the interested parties a reasonable time to comply with the mode of proceedings provided for the drainage of lowlands, he shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days. (1891, c. 434; Rev., s. 3376; C. S., s. 5282.)

§ 156-25. Protection of canals, ditches, and natural drains. — If any person shall fell any tree in any ditch, canal, or natural drainway of any farm, unless he shall remove the same and put such ditch, canal, or natural drainway in as good condition as it was before such tree was so felled; or if any person shall stop up or fill in such ditch, canal, or drainway and thereby obstruct the free passage of water along the said ditch, canal, or drainway, unless the said person shall first secure the written consent of the landowner, and those damaged by such obstruction in said ditch, canal, or drainway, or unless such person so filling in and stopping up such ditch, canal, or drainway shall, upon the demand of the person so damaged, clean out and put the said ditch, canal, or drainway in as good condition as the same was before such filling in and stopping up of the said ditch, canal, or drainway happened, he shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten ($10.00) nor more than fifty dollars ($50.00), or imprisoned not less than 10 nor more than 30 days. (1901, c. 478; Rev., s. 3382; C. S., s. 5283.)

Local Modification. — Tyrrell: 1907, c. 438.

Part 2. Petition under Agreement for Construction.

§ 156-26. Procedure upon agreement. — (a) Agreement; Names Filed. — Whenever a majority of the landowners or the persons owning three fifths of all the lands in any well-defined swamp or lowlands shall, by a written agreement, agree to give a part of the land situated in such swamp or lowlands as compensation to any person, firm, or corporation who may propose to cut or dig any main drainway through such swamp or lowlands, or shall, by written agreement, contract with any person, firm or corporation to cut or dig any main drainway through such swamp or lowlands, then the person, firm, or corporation so proposing to cut or dig such main drainway shall file with the clerk of the superior court of the county, or, if there be two or more counties, with the clerk of the superior court of either county in or through which the proposed canal or drainway is to pass, the names of the landowners, with the approximate number of acres owned by each to be affected by the proposed drainway who have entered into the written agreement with the person, firm, or corporation, together with a brief outline of the proposed improvement, and in addition thereto shall file with the clerk the names and addresses, as far as can be ascertained, of the landowners, with the number of acres owned by each of them to be affected by the proposed drainway, who have not made any agreement with the person, firm, or corporation proposing to do the improvement.

(b) Notice. — Upon the filing of such names, it shall be the duty of the clerk to forthwith issue a notice which shall be served by the sheriff to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than 10 and not more than 20 days from the service of such notice, or, in lieu of the personal service hereinabove required, it shall be sufficient for the clerk to publish in a newspaper published in the county once a week for four weeks a notice to all landowners who have not made any agreement to appear before him at a certain date, which date shall be not less than 30 days and not more than 40 days from the first publication of notice, at which time and place the landowners shall state their objections to the proposed improvement, and in addition thereto make an estimate of the amount of damage that might be done to the land owned by each of them on account of the proposed drainway.

(c) Hearing; Viewers. — Upon the hearing it shall be the duty of the clerk of the superior court to forthwith appoint three disinterested persons, none of whom shall own land to be affected by such drainway, if requested by the person, firm, or corporation proposing to do the improvement, whose duty it shall be to familiarize themselves with the proposed improvement, view the premises of the landowners, estimating damages, and make an estimate themselves of the amount of damages that might accrue to the lands of each landowner filing objections on account of the proposed improvement, and report the same to the clerk of the superior court within 15 days from the date of their appointment.

(d) Report; Bond. — Immediately upon the filing of the reports the clerk of the superior court shall forthwith notify the person, firm, or corporation proposing to dig the drainway or canal of the estimated damages contained in the reports, and the person, firm, or corporation shall execute and deliver a bond in a surety company authorized to do business in the State of North Carolina in twice the sum total of the estimated amount of damages, which bond shall be payable to the clerk of the superior court and conditioned upon the payment to the landowners of the amount of damages that may be assessed in the manner hereinafter provided.

(e) Construction Authorized. — Upon the execution and delivery to the clerk of the said bond, the person, firm, or corporation so proposing to cut or dig such main drainway shall be and they are hereby authorized to proceed with the cutting or digging of the drainway through any lands in its proposed course, whether the owners of the land may have consented thereto or not, and the person, firm, or corporation so proposing to cut or dig the drainway shall have the proper and necessary right-of-way for that purpose and for all things incident thereto through any lands or timbers situated in such swamp or lowlands. (1917, c. 273, s. 1; C. S., s. 5284; 1969, c. 1046.)

Editor's Note.—The provisions of this and the following sections under this Article supplant those of the act of 1915, Chapter 141, which was held unconstitutional and void in Lang v. Carolina Land & Dev. Co., 169 N.C. 662, 86 S.E. 599 (1915), as a taking of private property without providing for just compensation to the private owners of lands, whose consent has not been given.

Exemption of Housing Authority from Fees.—See opinion of Attorney General to Honorable F. Crane, Commissioner of Labor, 41 N.C.A.G. 303 (1971).

Withdrawal of Petitioners. — Upon the return day set by the clerk of the court for the hearing of the landowners in a proposed drainage district, it may be shown by those opposed to the petition that some of those who signed it desired to withdraw, and that eliminating their names the petitioners would not represent a majority of the landowners in the district, or of persons owning three fifths of the lands, as the statute requires. Armstrong v. Beaman, 181 N.C. 11, S.E. 879 (1921).

§ 156-27. Recovery for benefits; payment of damages. — After the drainway herein provided for shall be completed the person, firm, or corporation cutting or digging the same shall be entitled to recover of the landowners owning that part of the land with reference to which no contract for compensating those cutting or digging the drainway may have been made, an amount equal to the benefits to accrue to such lands by reason of the drainway, and shall be required by the clerk of the superior court to pay to any landowner the amount of damages in excess of benefits which may be done to the land to be determined in the manner hereinafter provided: Provided, that the recovery from any owner of the land shall be limited to the benefits to accrue to that land owned by such person, and situated in such swamp or lowlands or adjacent thereto; and provided further, that the amount to be so recovered as herein provided for until fully paid shall be and constitute a lien upon such land, the lien to be in force regardless of who may own the land at the time the amount to be recovered as compensation for digging or cutting the drainway shall be determined. (1917, c. 273, s. 2; C. S., s. 5285.)

§ 156-28. Notice to landowners; assessments made by viewers. — After the completion of the main drainway, upon the application of the person, firm, or corporation, or their heirs or assigns, digging or cutting the same, the clerk of the superior court of the county in which any land through which the drainway may pass is situated shall issue a notice to be served by the sheriff upon any person who may have failed to agree with the person, firm, or corporation digging or cutting such drainway, upon a compensation to be paid by the landowner for the digging or cutting of such drainway, notifying the landowner that on a certain day, which shall be named in the notice and not less than 20 days from the date of the issuing of the notice, the clerk of the superior court will appoint three competent and disinterested persons, one of whom may be a surveyor, and none of whom shall own land to be affected by the drainway, to view the land so drained and for which no compensation for the drainage may have been agreed upon as aforesaid, and report to the clerk of the superior court what amount shall be paid therefor by the various landowners who may have failed to arrange for and agree upon the compensation for the drainage as aforesaid, and the amount of damages in cases where the damages have exceeded the benefits, which shall be paid to the landowners by the person, firm, or corporation cutting or digging such canal or drainway. In making the appointment of the viewers the clerk of the superior court shall hear any objections which may be advanced by those interested to any of the persons the clerk may consider to be appointed as viewers, but the clerk shall name those whom he considers best qualified. (1917, c. 273, s. 3; C. S., s. 5286.)

§ 156-29. Report filed; appeal and jury trial. — A report signed by two of the persons appointed as viewers shall be entered by the clerk as the report of the viewers, and from the report any landowner affected thereby and the person, firm, or corporation digging or cutting such drainway shall have the right of appeal and the right to have any issue arising upon the report tried by a jury, provided exceptions shall be filed to the report within 20 days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial be demanded, the clerk shall transfer the proceedings to the civil-issue docket and it shall be heard as other civil actions. If no jury trial be demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special proceedings, but no jury trial shall be had unless demanded as herein provided for. (1917, c. 273, s. 4; C. S., s. 5287.)

Cross Reference. —As to appeal in special proceedings, see §§ 1-272 through 1-276.

Jurisdiction of Superior Court. — The superior court, upon certification of the opinion of the Supreme Court, has jurisdiction to retain the cause for hearing upon the appeal from the clerk's order, this section providing that appeals from the clerk in drainage assessment proceedings shall be the same as in special proceedings, and § 1-276, giving the superior court jurisdiction to hear and determine all matters in controversy upon appeal from the clerk in special proceedings. Spence v. Granger, 207 N.C. 19, 175 S.E. 824 (1934). See Flat Swamp, Lock's Creek & Evan's Creek Canal Co. v. McAlister, 74 N.C. 159 (1876.)

§ 156-30. Confirmation of report. — Unless an appeal shall be taken by any person affected by the report, or by the person, firm, or corporation cutting or digging the drainway, and a jury trial demanded within 20 days after the report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the jury; if exceptions shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings, and judgment entered accordingly. If the report of the viewers be confirmed by the clerk because no exceptions or demand for a jury trial were filed within 20 days, the judgment of confirmation shall be the judgment of the court, and any judgment herein entered against the person, firm, or corporation cutting or digging the drainway shall be a judgment against the person, firm, or corporation and the surety on its bond given as hereinabove provided. (1917, c. 273, s. 5; C. S., s. 5288.)

§ 156-31. Payment in installments. — The amount to be recovered from any person as compensation for digging or cutting the drainway after the amount shall be definitely determined as herein provided for, shall be payable in five equal annual installments, the first payable one year from the filing of the report of the viewers with the clerk of the superior court, and one payment on the same day of each year thereafter until the full amount be paid. The amount to be recovered from the person, firm, or corporation cutting or digging the drainway, on account of any damages in excess of benefits to the lands of any landowner, shall be payable in one installment which shall be due and payable one year from the filing of the report of the viewers with the clerk of the superior court. (1917, c. 273, s. 6; C. S., s. 5289.)

ARTICLE 2.

Jurisdiction in County Commissioners.

§ 156-32. Petition filed; board appointed; refusal to serve misdemeanor. —Upon the petition of three citizens in any county to the county commissioners, petitioning for the draining of any creek, swamp, or branch, either upon the plea of health or to promote and advance the agricultural interest of the farmers who may own lands lying on such creek, swamp, or branch petitioned to be drained, the county commissioners shall within 10 days after the filing of such petition order the county surveyor to summon three disinterested freeholders, good and lawful men of intelligence and discretion, who shall constitute a board, and the county surveyor shall be the chairman of such board; and the chairman shall give all persons who may be interested in having such creek, swamp, or branch drained three days' notice of the time and place of the meeting of the board: Provided, the petitioners shall deposit with the county treasurer the sum of twenty-five dollars ($25.00) for the payment of current expenses not otherwise provided for in this Article. Any person duly summoned by the county surveyor to act as a commissioner for the drainage of any such creek, swamp, or branch, who shall refuse to serve, shall be guilty of a misdemeanor and be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding 30 days. (1887, c. 267; Rev., ss. 3379, 4011; C. S., s. 5290.)

Local Modification. — Hyde: 1901, c. 166.

§ 156-33. Duty of board; refusal to comply with their requirements misdemeanor. — The board provided for in G.S. 156-32 shall meet at the call of the chairman and shall proceed to inspect and examine the lands as described in the petition to be drained, and the board shall have power to summon witnesses, administer oaths, and take testimony, and if the board decides that the lands specified in the petition shall be drained, either upon the plea of health or for the benefit of the farms lying on or contiguous to such watercourse, then the board shall select a place at which the ditch shall be begun. They shall also decide the depth and width of the ditch to be dug, and shall proceed to survey, locate, lay off, and mark the course of the ditch, and the board shall assign to the landowners the amount of the labor to be performed and the amount of money to be paid for the purpose of defraying the necessary expenses by each landowner in proportion to the amount of lands drained or pro rata benefits received by the drainage of such lands, and the board shall specify the time in which the work so assigned shall be completed: Provided, no one shall be required to commence on the work assigned to him until the person next below him shall have completed his work in accordance with the specifications of the board. If any person shall refuse to comply with any of the requirements of the board he shall be guilty of a misdemeanor and fined not exceeding two hundred dollars ($200.00), or imprisoned not exceeding two years. (1887, c. 267, ss. 2, 7; Rev., ss. 3377, 4012; C. S., s. 5291.)

§ 156-34. Report filed. — The board shall make a written report to the county commissioners showing all the acts and decisions of the board as to the length, depth, and width of the ditch, the names of all the owners of the lands that will be drained, and the amount of work to be performed and the amount of money to be paid by each person benefited by such drainage. But in case the board determines that the lands described in the petition shall not be drained, then the expenses of the board shall be paid out of the funds deposited with the county treasurer by the petitioners. (1887, c. 267, s. 3; Rev., s. 4013; C. S., s. 5292.)

§ 156-35. Owners to keep ditch open. — All persons whose lands shall be drained under the provisions of this Article shall keep the ditch on their lands clear of all rafts of logs, brush, or any trash that will obstruct the flow of water through the ditch. (1887, c. 267, s. 4; Rev., s. 4014; C.S., s. 5293.)

§ 156-36. Compensation of board. — The compensation of the board shall be as follows: The county surveyor shall receive three dollars ($3.00) per day and the other members shall receive one dollar and fifty cents ($1.50) per day while engaged in the duties imposed in this Chapter. (1887, c. 267, s. 5; Rev., s. 4015; C. S., s. 5294.)

SUBCHAPTER II. DRAINAGE BY CORPORATION.

ARTICLE 3.

Manner of Organization.

§ 156-37. Petition filed in superior court. — Any proprietor in fee of swamplands, which cannot be drained except by cutting a canal through the lands of another or other proprietor in fee, situated at a lower level and which would also be materially benefited by the cutting of such canal, who desires that such canal be cut on the terms on which it is hereinafter allowed, may apply by petition, setting forth the facts, to the superior court of the county in which any of the lands through which the canal will pass may lie. (1868-9, c. 164, s. 2; Code, s. 1311; Rev., s. 3996; C. S., s. 5295.)

Cross References. — As to constitutionality of, and general procedure under, this Chapter, see notes to §§ 156-1 and 156-2. As to prerequisites to establishment of drainage corporation, see note to § 156-40.

Evidence Insufficient to Show Establishment of Drainage Corporation. — Where petitioners show only the granting of an easement in response to a petition by an individual to be allowed to drain into an existing canal on the lands of another under the provisions of §§ 156-2, 156-3 and 156-10, such evidence is insufficient to show the establishment of a drainage corporation under the provisions of this section. In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

Burden of Proof Where Drainage Assessment Challenged. — When the validity of a drainage assessment is challenged the burden is upon the drainage district or corporation to show that it was created in substantial compliance with the applicable statutes and that the assessments were levied pursuant to and in compliance with the statutory provisions. In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

Stated in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-38. Commissioners appointed; report required. — On the establishment by the petitioner of his allegations, the court shall appoint three persons as commissioners who, having been duly sworn, shall examine the premises and inquire and report:

(1) Whether the lands of the petitioner can be conveniently drained otherwise than through those of some other person.

(2) Through the lands of what other persons a canal to drain the lands of the petitioner would properly pass, considering the interests of all concerned.

(3) A description of the several pieces of lands through which the canal would pass, and the present values of such portions of the pieces of lands as would be benefited by it, and the reasons for arriving at the conclusion as to the benefit.

(4) The route and plan of the canal, including its breadth, depth, and slope, as nearly as they can be calculated, with all other particulars necessary for calculating its cost.

(5) The probable cost of the canal and of a road on its bank, and of such other work, if any, as may be necessary for its profitable use.

(6) The proportion of the benefit (after a deduction of all damages) which each proprietor would receive by the proposed canal and a road on its bank if deemed necessary and in which each ought, in equity and justice, to pay toward their construction and permanent support.

(7) With their report they shall return a map explaining, as accurately as may be, the various matters required to be stated in their report. (1868-9, c. 164, s. 3; Code, s. 1312; Rev., s. 3997; C. S., s. 5296.)

Prerequisites to Establishment of Corporation. — See note to § 156-40.

Validity of Assessment. — An assessment made under the provisions of this Subchapter is constitutional and valid. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

Collateral Attack on Assessment. — When an assessment does not appear to be void on its face, it may not be collaterally attacked by a defendant owner of lands embraced in the district, in an action to enforce its payment. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

When Report of Commissioners Confirmed. —The report of the commissioners, assessing persons for benefits accruing to their lands from the operations of the plaintiff canal company, should have been confirmed by the court, as to those defendants who did not object; but as to those who did, the court should have proceeded to try the issues involved in the controversy. Lock's Creek Canal Co. v. McKeithan, 89 N.C. 52 (1883).

Notice to Landowners. — Landowners, whose interests might be affected under proceedings under the provisions of this Chapter, are entitled to notice. Gamble v. McCrady, 75 N.C. 509 (1876).

It is immaterial whether the owner of lands had notice of a meeting at which a committee had been appointed to assess the lands in the district and determine the amount of each assessment, when the assessment has been accordingly made, and duly ratified and confirmed at a subsequent meeting regularly called and held in accordance with the statute, of which he had notice. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

Cited in In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

§ 156-39. Surveyor employed. — The commissioner may employ a surveyor to prepare the map required to accompany their report. (1868-9, c. 164, s. 4; Code, s. 1313; Rev., s. 3998; C. S., s. 5297.)

§ 156-40. Confirmation of report. — If it appear that the lands on the lower level will be increased in value twenty-five percent (25%) or upwards by the proposed improvement, within one year after the completion thereof, and that the cost of making such improvement will not exceed three fourths of the present estimated value of the land to be benefited, and that the proprietors of at least one half in value of the land to be affected consent to the improvement, the court may confirm such report, either in full or with such modifications therein as shall be just and equitable. (1868-9, c. 164, s. 5; Code, s. 1314; Rev., s. 3999; C. S., s. 5298.)

Prerequisites to Establishment of Drainage Corporation. — In order to establish a drainage corporation it is necessary that a petition in conformity with § 156-37 be filed, and that commissioners be appointed and that they file a report in conformity with § 156-38 and that there be an adjudication and confirmation of the report. It is only after such confirmation that the corporation may be declared to exist and may proceed to organize and levy assessments. In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

§ 156-41. Proprietors become a corporation. — Upon a final adjudication, confirming the report, the proprietors of the several pieces of land adjudged to be benefited by the improvement shall be declared a corporation, of which the capital stock shall be double the estimated cost of the improvements, and in which the several owners of the land adjudged to be benefited shall be corporators, holding shares of stock in the proportions in which they are adjudged liable for the expense of making and keeping up the improvement. (1868-9, c. 164, s. 6; Code, s. 1315; Rev., s. 4000; C. S., s. 5299.)

Cited in In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949).

§ 156-42. Organization; corporate name, officers and powers. — The clerk of the court of the county in which the proceeding is pending or any corporator, who is a petitioner, may call a meeting of the corporators, at which meeting the corporators shall choose a name for the corporation, unless the commissioners selected the name, elect a president, vice-president, secretary and treasurer, but said officers shall be chosen or elected from the corporators who are petitioners in the proceeding; and they shall also choose or elect a board of directors and they shall be chosen or elected from the corporators who are petitioners in the proceeding. The corporators shall also make all bylaws and regulations, not contrary to law, which may be necessary and proper for effecting the purpose of the corporation, but said duty may be delegated to the board of directors. They shall fix the number of shares of stock, and assign to each proprietor or corporator his proper number, but this duty and right may be delegated to and done by the board of directors. The board of directors shall have such powers as are generally given to directors under the corporation law of the State; and they shall assess the sums or amount which shall be paid by each proprietor or corporator in conformity with and in compliance with the report of the commissioners on which the corporation is based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which such proceeding was instituted, the same shall be passed upon by the clerk of court and when approved by the clerk, said assessments shall become judgments against the several proprietors, corporators and owners so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also have power, if they deem it proper, to fix and prescribe the time, mode and manner of payment; and do such other things as are necessary for the construction, enlargement and keeping up or maintaining said canal and improvement. In every meeting of the corporators or stockholders, each proprietor or corporator shall have one vote for each share of stock owned by him. (1868-9, c. 164, s. 7; Code, s. 1316; Rev., s. 4001; C. S., s. 5300; 1939, c. 180, s. 1.)

Cited in In re Atkinson-Clark Canal Co., 231 N.C. 131, 56 S.E.2d 442 (1949); In re Atkinson-Clark Canal Co., 234 N.C. 374, 67 S.E.2d 276 (1951).

§ 156-43. Incorporation of canal already constructed; commissioners; reports. — Whenever the proprietors of any canal already cut shall desire to become incorporated, any number of the proprietors, not less than one third in number, may file their petition before the clerk of the superior court of the county in which the canal is located, or in either county, where the canal may be located in more than one county, setting forth the names of the proprietors, the length and size of the canal, the names of the owners of land draining in such canal, and the quantity of land tributary thereto. And upon filing the petition, summons shall issue to all parties having an easement in the canal, returnable as in other special proceedings; upon the return thereof, or upon a day fixed by the clerk for hearing same, all owners of the canal may become corporators therein, and upon failure of any to avail themselves of that right, they shall not be entitled to become corporators, except under such bylaws and regulations as such corporation shall make and declare. But those who fail to avail themselves of the benefit of this Subchapter shall not be deprived of their easement in the canal, but shall enjoy the same upon payment to the corporation of the assessment made upon them pro rata with the corporators; such assessment shall be made on the land tributary to the canal and apportioned pro rata to each owner thereof; it shall be made by the corporation on 10 days' notice to each owner of the land, under such rules and regulations as the bylaws may prescribe; but any person dissatisfied therewith shall have the right to appeal to a jury at the regular term of the superior court of the county, and the amount of damages assessed shall be a first lien on the land of the owner against whom judgment shall be rendered.

Upon the return date of the summons or on the hearing by the clerk as provided in this section, the clerk of the court may appoint three persons as commissioners, who having been duly sworn shall examine the premises and inquire and report:

(1) The route and plan of the canal, including the breadth, depth and slope as nearly as they can be calculated, with all others particulars necessary for calculating the cost of enlarging and improving said canal.

(2) The probable cost of the improvement and enlargement of said canal.

(3) The proportion which each proprietor or corporator ought in equity and justice to pay toward the enlargement, improvement and permanent support and upkeep of said canal.

(4) With their report they shall return a map explaining as accurately as may be, the various matters required and necessary in aid or explanation of their report.

(5) The said report shall be heard and determined as other reports in special proceedings, and if approved by the clerk, such proprietors shall become a body corporate or a corporation.

(6) A meeting of the corporators may be called by the clerk of court or by any corporator or proprietor who is a petitioner in the proceeding, and at such meeting a president, vice-president, secretary and treasurer shall be elected from the proprietors or corporators who are petitioners; and also a board of directors shall be elected from the proprietors or corporators who are petitioners in the proceeding.

(7) The board of directors shall assess the sum or amount which shall be paid by each proprietor or corporator in conformity and compliance with the report of the commissioners on which the corporation was based. When said assessments against said proprietors or corporators and their lands affected are duly certified to the clerk of the superior court of the county in which said proceeding was pending and instituted, the same shall be passed upon by the clerk of court, and when approved by the clerk, said assessments shall become judgments against the several proprietors or corporators so assessed, and the same shall be liens on the lands of the owners or corporators against whom said assessments were made and judgments entered, subject only to taxes, but said judgments shall be judgments in rem only. The board of directors will also, if they deem it proper, fix and prescribe the time, manner and mode of payment. (1889, c. 380; 1901, c. 670; Rev., s. 4008; C. S., s. 5301; 1939, c. 180, s. 2.)

Assessment Can Be Levied Only on Property Benefited. — The general rule is well settled that a special assessment for the purpose of drainage can be levied only upon property benefited by the improvement. It is said that the legal theory underlying drainage assessments is one of benefit increasing the value of the land and justifying its assessment. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

Where it clearly appears that the canal will neither drain a particular tract of land nor render it more accessible, there is no valid reason for including it in the district, and if it is nevertheless arbitrarily made a part thereof, the owner may obtain relief. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

The statutory provisions determine the property liable to drainage assessment. Hence to constitute a valid assessment the particular land against which it is levied must come within the meaning of this section. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

"Land Tributary to the Canal". — As here used the phrases "land tributary thereto" and "land tributary to the canal" mean land from which water drains or flows into the canal. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

Burden of Proof on Appeal. — This section gives to any person dissatisfied with an assessment the right to appeal to a jury at a regular term of the superior court of the county. In such event, it would seem that the authority undertaking to establish the assessment would still have the burden of proving the provisions of the statute essential to the creation of a valid assessment. It may be that the order of the clerk of the superior court approving and confirming the assessment as proposed by the commissioners and the board of directors of the corporation creates a prima facie case. But a prima facie case, or prima facie evidence, does not change the burden of proof. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

In order to constitute a valid drainage assessment it is necessary that the land assessed drain or flow into the canal, and therefore on appeal to the superior court on a landowner's exceptions to the order of the clerk confirming assessments as proposed by the commissioners, the drainage district has the burden of proving the number of acres of land the exceptor owns which drain into the canal and what amount said land should be assessed per acre. The fact that exceptor first introduced evidence, presumably on the theory that the order of the clerk made out a prima facie case, does not alter the rule as to the burden of proof. In re Westover Canal, 230 N.C. 91, 52 S.E.2d 225 (1949).

Finality of Judgment of Clerk of Superior Court. — A judgment entered by a clerk of the superior court in a special proceeding under this section will stand as a judgment of the court, if not excepted to and reversed or modified on appeal, as allowed by law. In re Atkinson-Clark Canal Co., 234 N.C. 374, 67 S.E.2d 276 (1951).

Where the clerk's decision was erroneous, and the petitioner undertook to appeal therefrom and the appeal was dismissed in the superior court, and notice of appeal was given to the Supreme Court, but the appeal was not perfected, the judgment of the clerk of the superior court was as final and effective as if no appeal therefrom had been attempted. In re Atkinson-Clark Canal Co., 234 N.C. 374, 67 S.E.2d 276 (1951).

ARTICLE 4.

Rights and Liabilities in the Corporation.

§ 156-44. Shares of stock annexed to land. — The ownership of the shares of stock is indissolubly annexed to the ownership of the pieces of land adjudged to be benefited by the improvement; and such shares, or a part thereof proportionate to the area of such land that may descend or be conveyed for any longer time than three years, shall, upon such descent or conveyance, descend and pass with the land, even although such shares be not mentioned in the deed of conveyance, and although their transfer be forbidden by such deed so that every owner of such land in possession, except a tenant for a term of years, not exceeding three, and every owner in reversion or remainder after a term not exceeding three years, shall, during his ownership, be entitled to all the rights and privileges and be subject to all the obligations and burdens of a corporator. Every attempted sale of shares otherwise than as annexed to the land shall be void. (1868-9, c. 164, s. 8; Code, s. 1317; Rev., s. 4002; C. S., s. 5302.)

Stated in Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

§ 156-45. Shareholders to pay assessments. — Every corporator shall be bound to obey the lawful bylaws of the company, and pay all dues lawfully assessed on him: Provided, he shall in no case pay more than his proportion of the expenses as fixed by this Subchapter; and such dues may be collected in the corporate name in any court having jurisdiction; and every assessment duly docketed in the county where the land to be affected lies shall be a lien on the lands of the debtor which are connected with the corporation from the date of such docketing. (1868-9, c. 164, s. 9; Code, s. 1318; Rev., s. 4003; C. S., s. 5303.)

Cross Reference. — As to collection of assessments out of other property of delinquent, see § 156-106.

Assessments — Lien upon Land. — An assessment made upon owners of lands constitutes a lien upon the lands therein and is enforceable by proceedings in rem in a court having equitable jurisdiction. Personal judgment against the defendant may not be had, as in actions arising ex contractu. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916); Long Creek Drainage Dist. v. Huffstetler, 173 N.C. 523, 92 S.E. 368 (1917).

Not Enforceable by Justice of Peace (Now Magistrate). — A justice of the peace (now magistrate) had no jurisdiction over actions to enforce the payment of such assessments, and they would be dismissed upon motion to nonsuit when brought in a justice's court. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916); Long Creek Drainage Dist. v. Huffstetler, 173 N.C. 523, 92 S.E. 368 (1917).

Execution. — Assessments, made in accordance with the statute, become liens on the lands when properly certified by the officers of the corporation and docketed in the office of the superior court of the proper county; and executions may issue directing that such lands be sold to pay the assessments and the costs. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

Review by Certiorari. — The courts will review by writ of certiorari the action of the drainage corporation in making illegal assessments and enjoin such assessments that are absolutely void upon their face. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

Collateral Attack. — An assessment, that does not appear to be void on its face, cannot be attacked collaterally. Middle Canal Co. v. Whitley, 172 N.C. 100, 90 S.E. 1 (1916).

§ 156-46. Payment of dues entitles to use of canal. — Every corporator paying his dues legally assessed without regard to the number of his shares, shall be entitled to the full and free use of the canal for drainage and navigation, and of the road for passage and transportation. Bylaws may be made to regulate these rights, but no so as to produce an inequality. (1868-9, c. 164, s. 10; Code, s. 1319; Rev., s. 4004; C. S., s. 5304.)

§ 156-47. Rights of infant owners protected. — If any proprietor whose lands are adjudged to be benefited by a canal shall be an infant, no process shall be issued against him during his minority, or within 12 months thereafter, to enforce payments of any assessment, and he may, at any time within such 12 months, apply to have any order, judgment, or decree made against him set aside as to him. If the infant or his guardian shall, during his minority, and the 12 months next thereafter, pay the dues assessed on him, he shall have all the rights and privileges of corporator, to be exercised through his guardian. If the infant shall fail to pay, he shall not have any such rights, but if no action to set aside the judgment of the court creating the corporation shall have been brought by him as aforesaid, or upon the decision of such action against him, he shall be entitled to receive his proper share of stock and to possess all the rights and be bound by all the liabilities of a corporator, including a liability for assessments made during his minority, but not for interest on such, nor for any penalty for their prior nonpayment. (1868-9, c. 164, s. 11; Code, s. 1320; Rev., s. 4005; C. S., s. 5305.)

§ 156-48. Compensation for damage to lands. — If any proprietor of lands shall be damaged by any improvement proposed, the commissioners shall so report, and he shall be entitled to be compensated as may be just by the proprietor whose lands are benefited in proportion to the benefit to them respectively; but in estimating such damages the benefit shall be deducted, and such proprietor shall be entitled to all the rights and privileges of a corporator as respects the use of the improvement, but shall not be entitled to a vote, or be bound for the assessment. (1868-9, c. 164, s. 12; Code, s. 1321; Rev., s. 4006; C. S., s. 5306.)

§ 156-49. Dissolution of corporation. — If, from any cause, the canal or other improvement shall become or shall prove to be valueless, any corporator may apply as is provided in other cases of special proceedings, and the court may dissolve the corporation created in connection with it. (1868-9, c. 164, s. 13; Code, s. 1322; Rev., s. 4007; C. S., s. 5307.)

§ 156-50. Laborer's lien for work on canal. — Whenever work or repair shall be done on such canal and any of the parties owning lands liable to be assessed for such work or repairs shall fail or refuse to pay the amount assessed upon their land, then and in that event the laborers performing such work shall have a lien upon such land to the extent of the amount assessed against the same by the corporation, and such lien may be enforced in the same manner as provided by the laws of this State for the enforcement of laborers' lien. (1899, c. 600, s. 2; Rev., s. 4009; C. S., s. 5308.)

§ 156-51. Penalty for nonpayment of assessments. — Whenever any person whose lands have been adjudged liable to contribute to the maintenance or repair of such canal shall fail or refuse to pay the amount assessed against his land for such maintenance or repair for 30 days after such payment has been demanded by the company, then the company may give such person notice in writing of its intention to cut off his right of drainage into the canal, and if such person shall still neglect and refuse to pay such assessment for 30 days after such notice, then the company may proceed to so obstruct and dam up the ditches of such delinquent as will effectually prevent his draining in the canal. (1899, c. 600, s. 3; Rev., s. 4010; C. S., s. 5309.)

Applicability of Section. — The provisions of this section providing for a penalty for nonpayment of assessments relate only to the remedy available where incorporators fail and refuse to pay assessments duly levied. Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

In a proceeding by drainage corporations to have lands of respondents assessed for improvements upon allegations that respondents are not members of the corporation but that nevertheless their lands drain into the canals and would be materially benefited by the improvements, it was held that respondents' contention that the sole remedy of petitioners is under the provisions of this section to construct dams to prevent water draining from respondents' lands into the canals is untenable, since the provisions of this section are inapplicable to such proceeding, being applicable solely as a remedy where incorporators fail and refuse to pay assessments duly levied. Sawyer Canal Co. v. Keys, 232 N.C. 664, 62 S.E.2d 67 (1950).

Cited in Sawyer Canal Co. v. Keys, 234 N.C. 360, 67 S.E.2d 259 (1951).

§ 156-52. Corporation authorized to issue bonds. — The corporations organized under this Subchapter are authorized to issue bonds to such an amount and in such denomination as they may elect, payable at such times as may be provided, and to sell the same at not less than par, the proceeds of the sale of such bonds to be used for the payment of the costs of survey and construction and maintenance of the canal. The bonds shall constitute a lien upon the lands drained or improved by the canal as described in the reports of the commissioners. (1908, c. 75, s. 1; C. S., s. 5310.)

§ 156-53. Payment of bonds enforced. — Upon default of the payment of the interest or principal of such bonds, the holders of the bonds of the corporations organized under this Subchapter shall have a right to enforce the lien created by G.S. 156-52 by civil actions in the superior courts of the State. (1908, c. 75, s. 2; C. S., s. 5311.)

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts. — The clerk of the superior court of any county in the State of North Carolina shall have jurisdiction, power and authority to establish levee or drainage districts either wholly or partly located in his county, and which shall constitute a political subdivision of the State, and to locate and establish levees, drains or canals, and cause to be constructed, straightened, widened or deepened, any ditch, drain or watercourse, and to build levees or embankments and erect tidal gates and pumping plants for the purpose of draining and reclaiming wet, swamp or overflowed land; and it is hereby declared that the drainage of swamplands and the drainage of surface water from agricultural lands and the reclamation of tidal marshes shall be considered a public use and benefit and conducive to the public health, convenience and welfare, and that the districts heretofore and hereafter created under the law shall be and constitute political subdivisions of the State, with authority to provide by law to levy taxes and assessments for the construction and maintenance of said public works. (1909, c. 442, s. 1; C. S., s. 5312; 1921, c. 7.)

Cross Reference. — As to construction of this Subchapter, see § 156-135.

Editor's Note. — For act relating to Scuppernong Drainage District in Washington County, see Session Laws 1947, c. 934. As to construction of drainage act for Mattamuskeet Lake, see Carter v. Board of Drainage Comm'rs, 156 N.C. 183, 72 S.E. 380 (1911).

For note on disposition of diffused surface waters in North Carolina, see 47 N.C.L. Rev. 205 (1968).

Constitutionality. — This and the following sections of the Subchapter are constitutional. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910); In re Big Cold Water Creek Drainage Dist., 162 N.C. 127, 78 S.E. 14 (1913); Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913); Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915); Lower Creek Drainage Comm'rs v. Mitchell, 170 N.C. 324, 87 S.E. 112 (1915); Beaufort County Lumber Co. v. Drainage Comm'rs, 174 N.C. 647, 94 S.E. 457 (1917).

Vested Rights Not Affected. — The proceedings in forming a drainage district under the original act was judicial and not administrative, and the 1921 amendment could not affect vested rights of landowners acquired under orders, judgments, or decrees made in pursuance of the powers conferred by the original act. Broadhurst v. Board of Comm'rs, 195 N.C. 439, 142 S.E. 477 (1928).

The rights of landowners in the Mattamuskeet Drainage District having been determined in a court having jurisdiction as to assessments in proportion to the benefits conferred, was not affected by the subsequent amendment of 1921, for such would be to impair the vested rights of those whose property had been assessed by the final judgment. O'Neal v. Mann, 193 N.C. 153, 136 S.E. 379 (1927).

Statewide Public Statute. — The drainage act, with its various amendments, is a statewide public statute. Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

Subchapter Is Not Objectionable As Not for Public Purpose. — This Subchapter authorizing the establishment of certain levee or drainage districts, is to present a scheme for the drainage of lowlands in which the public of the locality is generally interested, is at once comprehensive, adequate and efficient, in which the rights of all persons to be affected have been fully considered and protected, and is not objectionable on the ground that it is for the benefit of private landowners and not for public purposes. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910).

Nature and Purpose of Drainage Districts. — This Subchapter adopts a system for the cooperation of landowners in the drainage of lands by forming drainage districts, which are to become quasi-public corporations, for the purpose of improving the health of the district and the fertility of the lands, under which the lands are assessed in proportion to the benefits derived and an organization is effected in each district, to execute and maintain a system of drainage. In re Big Cold Water Creek Drainage Dist., 162 N.C. 127, 78 S.E. 14 (1913).

Basis of Legislative Authority. — The authority of the legislature to provide for the creation of levee and drainage districts is based upon the police power, the right of eminent domain, and the taxing power. Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

The drainage of swamps and of surface water from agricultural lands in a drainage district is of public benefit and conducive to the public health, etc., thus falling within the police power; and proceedings thereunder are in the exercise of the right of eminent domain. Taylor v. Richardson, 176 N.C. 217, 96 S.E. 1027 (1918).

Clerk's Authority Not a Delegation of Legislative Power. — The authority and powers conferred by this Subchapter upon the clerk of the court is not a delegation of legislative power and duty to the judicial department of the State prohibited by the Constitution, the powers and duties conferred being of a judicial nature in relation to the prescribed proceedings to be instituted for the establishment of drainage districts. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910).

Drainage Districts Are Quasi-Municipal Corporations. — Drainage districts created pursuant to the provisions of this Subchapter are quasi-municipal corporations. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

And Can Alter Their Boundaries Only as Permitted by Statute. — Municipal or quasi-municipal corporations created and having their boundaries fixed by statutory formula can alter their boundaries only as permitted by statute. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961). See § 156-93.2 et seq.

Lands in Several Counties. — Where, in a proceeding in Beaufort County, a drainage district, comprising lands in both Beaufort and Craven Counties, is duly created and organized under this and the following sections, and assessment rolls, showing assessments against each tract of land in the district, have been made and filed in each county, such assessments, as they become due, are liens upon the lands within the district to which they relate, and it is error for the court to dismiss an action in the nature of a mortgage foreclosure, for the collection of such drainage assessments against lands in Craven County, even where the assessment rolls for Craven County have been removed and there is left in that county no other record relating to the drainage district, except a map on which are shown the boundaries of the several tracts of land within the district in Craven County — the map itself being sufficient notice to a subsequent purchaser of the proceedings, including the assessment rolls filed in Beaufort County. Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

Collateral Attack on District. — The validity of a district laid off according to the drainage acts cannot be collaterally attacked. Newby & White v. Board of Drainage Comm'rs, 163 N.C. 24, 79 S.E. 266 (1913); Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915).

Proceedings Not Defective for Delay. — Proceedings for the establishment of a drainage district under this Article, and bonds to be issued therefor, will not be held as defective because further steps were not taken for several years after they had been commenced, the court holding, they were still pending, and because of the fact that the engineer and viewers did not file a profile map showing the surface of the ground, bottom grades, etc., at the time of the final report, as required by § 156-69, it appearing that this was later done upon order of the board of drainage commissioners, and otherwise the provisions of the statutes had been strictly followed. Oden v. Bell, 185 N.C. 403, 117 S.E. 340 (1923).

Right of Receiver to Intervene and Become Party to Suit in Federal Court. — See Board of Drainage Comm'rs v. Lafayette Southside Bank, 27 F.2d 286 (4th Cir. 1928).

Pendency of Proceedings Is Notice as to All Lands Embraced. — The pendency of a proceeding to lay off a drainage district under the provisions of the act is notice as to all the lands embraced in the district. Newby & White v. Board of Drainage Comm'rs, 163 N.C. 24, 79 S.E. 266 (1913).

§ 156-55. Venue; special proceedings. — When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county shall have and exercise the jurisdiction herein conferred, and the venue shall be in that county in which the petition is first filed. The law and the rules regulating special proceedings shall be applicable in this proceeding, so far as may be practicable; and the proceedings hereunder may be ex parte or adversary. (1909, c. 42, ss. 2, 38; C. S., s. 5313.)

Proceedings in Rem. — Proceedings to form drainage district under this Subchapter are regarded as proceedings in rem. Staton v. Staton, 148 N.C. 490, 62 S.E. 596 (1908); Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915); Taylor v. Richardson, 176 N.C. 217, 96 S.E. 1027 (1918).

§ 156-56. Petition filed. — A petition signed by a majority of the resident landowners in a proposed drainage district or by the owners of three fifths of all the land which will be affected or assessed for the expense of the proposed improvements may be filed in the office of the clerk of the superior court of any county in which a part of the lands is located, setting forth that any specific body or district of land in the county and adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow or too wet for cultivation, and the public benefit or utility or the public health, convenience or welfare will be promoted by draining, ditching, or leveeing the same or by changing or improving the natural watercourses, and setting forth therein, as far as practicable, the starting point, route, and terminus and lateral branches, if necessary, of the proposed improvement.

The petition will also show whether or not the proposed drainage is for the reclamation of lands not then fit for cultivation or for the improvement of land already under cultivation. It shall also state that, if a reclamation district is proposed to be established, such lands so reclaimed will be of such value as to justify the reclamation. (1909, c. 442, s. 2; C. S., s. 5314; 1921, c. 76; Pub. Loc. 1923, c. 88, s. 2; 1925, c. 85; 1927, c. 98.)

Local Modification. — Edgecombe: 1937, c. 278; 1939, c. 7; Halifax: 1939, c. 227; Hertford: 1939, c. 371; Iredell: 1925, c. 144; Nash: 1939, c. 376; Northampton: 1939, c. 227; Pitt: 1925, c. 205; Robeson: 1925, c. 144; Rowan: 1925, c. 144.

Cross Reference. — For the distinction between the reclamation districts and improvement districts, see § 156-62, subdivision (5).

This is a flexible proceeding, and is to be modified and molded by decrees from time to time to promote the objects of the proceeding. Adams v. Joyner, 147 N.C. 77, 60 S.E. 725 (1908); Staton v. Staton, 148 N.C. 490, 62 S.E. 596 (1908); In re Lyon Swamp Drainage Dist., 175 N.C. 270, 95 S.E. 485 (1918).

Assent of Statutory Number of Owners Sufficient. — It is not necessary that every owner of land within a drainage district should have assented to its formation when the statutory number thereof have done so. Taylor v. Richardson, 176 N.C. 217, 96 S.E. 1027 (1918).

Property Must Be Described. — One of the essentials of the proceeding is that the property sought to be charged shall be identified by description in the proceedings. Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917).

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-57. Bond filed and summons issued. — Upon filing with the petition a bond for the amount of fifty dollars ($50.00) per mile for each mile of the ditch or proposed improvement, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk of superior court, conditioned for the payment of all costs and expenses incurred in the proceeding in case the court does not grant the prayer of the petition, the clerk, shall at any time thereafter, issue summons to be served on all the defendant landowners, who have not joined in the petition and whose lands are included in the proposed drainage district. The summons may be served by publication as to any defendant who cannot be personally served as provided by law.

The attorney for the petitioners shall certify to the clerk of the superior court, prior to the hearing on the final report of the board of viewers, that due diligence has been used to determine the names of all landowners within the area of the proposed drainage district; and, that summons has been issued for such landowners, so determined, and served either by personal service or by publication for all known and unknown landowners, insofar as could be determined by due diligence. (1909, c. 442, s. 2; C. S., s. 5315; 1967, c. 621.)

Cross Reference. — See Local Modification under § 156-56.

In General. — The drainage laws of North Carolina have been largely copied from the acts in Indiana and Illinois, and following the construction of these acts for the long period of time the acts have been in force, it is essential that notice of summons in all such proceedings be given to all parties who will be affected thereby. Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917).

Summons on All Landowners. — This section is mandatory in requiring a "summons to be served on all the defendant landowners who have not joined in the petition and whose lands are included in the proposed drainage district." Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917). "But the statute requires only landowners to be made parties in such drainage proceedings." Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917).

Mortgagee Not Included. — It would interfere with a much-needed public development if, as a prerequisite thereto, and before a final order can be made, all defects of title and mortgages or liens that may be claimed must be looked up and adjudicated. It is sufficient that summons shall be served upon the parties in possession under an apparent legal title, and that before final adjudication notice shall be given in the manner prescribed in order that parties claiming liens by mortgage or otherwise, or title to the land adversely to those in possession, shall have opportunity to come in and oppose confirmation of the final report. Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915). See Drainage Comm'rs v. East Carolina Home & Farm Ass'n, 165 N.C. 697, 81 S.E. 947 (1914).

Effect of Failure to Serve Summons. — Where a landowner having an interest within the meaning of the statute, has not been served, and it does not appear that he was an apparent party, an order laying an assessment on his property is void, and the proceedings as they relate to him are a nullity, and the assessment may be restrained. Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915), holding a mortgagee not a necessary party, cited and distinguished. Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917).

Subsequent Notification. — The proceedings for forming a drainage district are in rem; and where a valid statute has been complied with therein, and it appears that an owner has not been served with process, it is admissible to notify him, in possession, nunc pro tunc, and have the lands therein assessed. Taylor v. Richardson, 176 N.C. 217, 96 S.E. 1027 (1918).

§ 156-58. Publication in case of unknown owners. — If, at the time of the filing of the petition, or at any time subsequent thereto, it shall be made to appear to the court by affidavit or otherwise that the names of the owners of the whole or any share of any tracts of land are unknown, and cannot after due diligence be ascertained by the petitioners, the court shall order a notice in the nature of a summons to be given to all such persons by a publication of the petition, or of the substance thereof, and describing generally the tracts of land as to which the owners are unknown, with the order of the court thereon, in some newspaper published in the county wherein the land is located, or in some other county if no newspaper shall be published in the first-named county, which newspaper shall be designated in the order of the court, and a copy of such publication shall be also posted in at least three conspicuous places within the boundaries of the proposed district, and at the courthouse door of the county. Such publication in a newspaper and by posting shall be made for a period of four weeks. After the time of publication shall have expired, if no person claiming and asserting title to the tracts of land and entitled to notice shall appear, the court in its discretion may appoint some disinterested person to represent the unknown owners of such lands, and thereupon the court shall assume jurisdiction of the tracts of land and shall adjudicate as to such lands to the same extent as if the true owners were present and represented, and shall proceed against the land itself. If at any time during the pendency of the drainage proceeding the true owners of the lands shall appear in person, they may be made parties defendant of their own motion and without the necessity of personal service, and shall thereafter be considered as parties to the proceeding; but they shall have no right to except to or appeal from any order or judgment theretofore rendered, as to which the time for filing exceptions on notice shall have expired. (1911, c. 67, s. 1; C. S., s. 5316; 1953, c. 675, s. 25.)

Owners Bound if Section Is Followed. — By virtue of the notice required by this section the owners of land have opportunity to intervene and assert any right they might have to oppose the proceeding, if deemed contrary to their interest. Not having done so, they are bound by the judgment under which bonds were issued. Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915).

Judgment Presumed Regular. — Where publication in accordance with this section has been made, every presumption is in favor of the regularity of the judgment. Taylor v. Richardson, 176 N. C. 217, 96 S.E. 1027 (1918).

Mortgagee Must Assert Rights. — In proceedings to form a drainage district under this statute, notice by publication is given of the filing of the report in the office of the clerk of the superior court, which is open to inspection to the landowner or other person interested, and a mortgagee of lands who does not intervene and assert his rights to oppose the proceedings is bound by the final judgment. Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915).

§ 156-59. Board of viewers appointed by clerk. — The clerk shall, on the filing of petition and bond, appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the Department of Natural Resources and Community Development; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district. In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C. S., s. 5317; 1961, c. 614, s. 4; c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Cross Reference. — See Local Modification under § 156-56.

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-60. Attorney for petitioners. — The petitioners shall select some learned attorney or attorneys to represent them, who shall prosecute the drainage proceeding and advise with the petitioners and board of viewers, and shall agree upon the compensation for his professional services up to the time when the district shall be established and the board of drainage commissioners elected, or as nearly so as the same may be approximated. If the petitioners are unable to agree upon the selection of an attorney or attorneys, the selection may be made by the clerk of the court. The foregoing provision shall not interfere with the right of any individual petitioner in the selection of an attorney to represent his individual interests if he shall deem the same desirable or necessary. (1917, c. 152, s. 1; C. S., s. 5318.)

§ 156-61. Estimate of expense and manner of payment; advancement of funds and repayment from assessments. — The clerk may make an estimate of the aggregate sum of money which shall appear to be necessary to pay all the expenses incident to the performance of the duties by the board of viewers, including the compensation of the drainage engineer and his necessary assistants, and also including the sum for the compensation of the attorney for the district, and such court costs as may probably accrue, which estimates shall embrace the period of services up to and including the establishment of the drainage district and the selection and appointment of the board of drainage commissioners. The clerk shall then estimate the number of acres of land owned or represented by the petitioners, as nearly so as may be practicable without actual survey, and shall assess each acre so represented a level rate per acre, to the end that such assessment will realize the sum of money which he has estimated as necessary to pay all necessary costs of the drainage proceeding up to the time of the appointment of the drainage commissioners, as above provided. The assessment above provided for which has been or may hereafter be levied shall constitute a first and paramount lien, second only to State and county taxes, upon the lands so assessed, and shall be collected in the same manner and by the same officers as county taxes are collected. The board of viewers, including the drainage engineer, shall not be required to enter upon the further discharge of their duties until the amount so estimated and assessed shall be paid in cash to the clerk of the court, which shall be retained by him as a court fund, and for which he shall be liable in his official capacity, and he shall be authorized to disburse the same in the prosecution of the drainage proceeding. Unless all the assessments shall be paid within a time to be fixed by the court, which may be extended from time to time, no further proceedings shall be had, and the proceeding shall be dismissed at the cost of the petitioners. If the entire sum so estimated and assessed shall not be paid to the clerk within the time limited, the amounts so paid shall be refunded to the petitioners pro rata after paying the necessary costs accrued. Nothing herein contained shall prevent one or more of the petitioners from subscribing and paying any sum in addition to their assessment in order to make up any deficiency arising from the delinquency of one or more of the petitioners. When the sum of money so estimated shall be paid, the board of viewers shall proceed with the discharge of their duties, and in all other respects the proceeding shall be prosecuted according to the law. After the district shall have been established and the board of drainage commissioners appointed, it shall be the duty of the board of drainage commissioners to refund to each of the petitioners the amount so paid by them as above provided, out of the first moneys which shall come into the hands of the board from the sale of bonds or otherwise, and the same shall be included in ascertaining the total cost of improvement.

In lieu of the procedures set forth in the preceding paragraph, the board of county commissioners may advance funds, or any part thereof, for the purposes set forth in the preceding paragraph. Such advances shall be made to a county official designated by the commissioners, and shall be disbursed upon such terms as the county commissioners may direct. If the district shall be organized, the funds advanced shall be repaid from assessments thereafter levied. (1917, c. 152, s. 1; C. S., s. 5319; 1941, c. 342; 1961, c. 614, s. 6; c. 662.)

§ 156-62. Examination of lands and preliminary report. — The board of viewers shall proceed to examine the land described in the petition, and other land if necessary to locate properly such improvement or improvements as are petitioned for, along the route described in the petition, or any other route answering the same purpose if found more practicable or feasible, and may make surveys such as may be necessary to determine the boundaries and elevation of the several parts of the district, and shall make and return to the clerk of the superior court within 30 days, unless the time shall be extended by the court, a written report, which shall set forth:

(1) Whether the proposed drainage is practicable or not.

(2) Whether it will benefit the public health or any public highway or be conducive to the general welfare of the community.

(3) Whether the improvement proposed will benefit the lands sought to be benefited.

(4) Whether or not all the lands that are benefited are included in the proposed drainage district.

(5) Whether or not the district proposed to be formed is to be a reclamation district or an improvement district. A reclamation district is defined to be a district organized principally for reclaiming lands not already under cultivation. An improvement district is defined to be a district organized principally for the improvement of lands then under cultivation. The board of viewers shall further report, if the district is a reclamation district within the above definition, whether or not the proposed drainage would be justified by the additional value for agricultural purposes given to land so drained.

They shall also file with this report a map of the proposed drainage district, showing the location of the ditch or ditches or other improvement to be constructed and the lands that will be affected thereby, and such other information as they may have collected that will tend to show the correctness of their findings. (1909, c. 442, s. 3; C. S., s. 5320; 1927, c. 98, s. 2.)

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-63. First hearing of preliminary report. — The clerk of the superior court shall consider this report. If the viewers report that the drainage is not practicable or that it will not benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall approve such findings, the petition shall be dismissed at the cost of the petitioners, and such petition shall likewise be dismissed at the cost of the petitioners if it is sought to set up a reclamation district and the viewers report that the cost of reclaiming the land would be so great as not to justify the expense of draining it. Such petition or proceeding may again be instituted by the same or additional landowners at any time after six months, upon proper allegations that conditions have changed or that material facts were omitted or overlooked. If the viewers report that the drainage is practicable and that it will benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall so find, then the court shall fix a day when the report will be further heard and considered. (1909, c. 442, s. 4; C. S., s. 5321; 1927, c. 98, s. 3.)

Date for Objections Set by Clerk. — See Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-64. Notice of further hearing. — If the petition is entertained by the court, notice shall be given by publication once a week for at least two consecutive weeks in some newspaper of general circulation within the county or counties, if one shall be published in such counties, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places within the drainage district, that on the date set, naming the day, the court will consider and pass upon the report of the viewers. At least 15 days shall intervene between the date of the publication and the posting of the notices and the date set for the hearing. (1909, c. 442, s. 5; C. S., s. 5322; 1963, c. 767, s. 1.)

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-65. Further hearing, and district established. — At the date appointed for the hearing the court shall hear and determine any objections that may be offered to the report of the viewers. If it appear that there is any land within the proposed levee or drainage district that will not be affected by the leveeing or drainage thereof, such lands shall be excluded and the names of the owners withdrawn from such proceeding; and if it shall be shown that there is any land not within the proposed district that will be affected by the construction of the proposed levee or drain, the boundary of the district shall be so changed as to include such land, and such additional landowners shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. After such change in the boundary is made, the sufficiency of the petition shall be verified, to determine whether or not it conforms to the requirements hereinbefore provided. The efficiency of the drainage or levees may also be determined, and if it appears that the location of any levee or drain can be changed so as to make it more effective, or that other branches or spurs should be constructed, or that any branch or spur projected may be eliminated or other changes made that will tend to increase the benefits of the proposed work, such modification and changes shall be made by the board. The engineer and the other two viewers may attend this meeting and give any information or evidence that may be sought to verify and substantiate their report. If necessary, the petition, as amended, shall be referred by the court to the engineer and two viewers for further report. The above facts having been determined to the satisfaction of the court, and the boundaries of the proposed district so determined, it shall declare the establishment of the drainage or levee district, which shall be designated by a name or number, for the object and purpose as herein set forth.

If any lands shall be excluded from the district because of the court having found that such lands will not be affected or benefited, and the names of the owners of such lands have been withdrawn from such proceeding, but such lands are so situated as necessarily to be located within the outer boundaries of the district, such fact shall not prevent the establishment of the district, and such lands shall not be assessed for any drainage tax; but this shall not prevent the district from acquiring a right-of-way across such lands for constructing a canal or ditch or for any other necessary purpose authorized by law.

The court shall further determine, if it is sought to establish a reclamation district, whether or not the increased value of the particular land should be so great as to justify the cost and expenses of its reclaiming. (1909, c. 442, s. 6; 1911, c. 67, s. 2; C. S., s. 5323; 1927, c. 98, s. 4.)

Public Benefits Govern. — It is because of the benefits which accrue to the public from the establishment of a drainage district under the statute, that power conferred thereby upon the court to include lands of owners who are unwilling to sign the petition, or who oppose the establishment of the district, is sustained. O'Neal v. Mann, 193 N.C. 153, 136 S.E. 379 (1927).

Minority Landowner Cannot Contest Formation of District. — A minority landowner included in a proposed drainage district to be laid out may not contest the formation of the district, but can raise only the issue as to his benefits therefrom. Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

Signer of Original Petition Can Object. — Upon report of the viewers at the final hearing in proceedings to lay off a drainage district, one who signed the original petition may have ascertained from the information contained in the report, contrary to his previous opinion, that the cost of the improvements and damages will amount to more than the benefits to his land, and hence he may then file his objections, and the same procedure is then open to him as if he had not signed the petition. Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

Boundaries Must Include All Lands Benefited. — The court has no authority to decree the establishment of a drainage district which does not include within its boundaries all lands benefited by the work to be done. It must enlarge the boundaries to include all such land. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

A smaller drainage district may be laid off within the boundaries of a larger one, theretofore organized, the purposes of each harmonizing with the purposes of the other. Drainage Comm'rs v. East Carolina Home & Farm Ass'n, 165 N.C. 697, 81 S.E. 947 (1914).

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-66. Right of appeal. — Any person owning lands within the drainage or levee district which he thinks will not be benefited by the improvement and should not be included in the district may appeal from the decision of the court to the superior court of such county, in termtime, by filing an appeal, accompanied by a bond conditioned for the payment of the costs if the appeal should be decided against him, for such sum as the court may require, not exceeding two hundred dollars ($200.00), signed by two or more solvent sureties or in some approved surety company to be approved by the court. (1909, c. 442, s. 8; C. S., s. 5324.)

Cross Reference. — As to appeal from final hearing, see § 156-75 and note.

Proceedings upon Appeal. — A petition for the establishment of a drainage district of a majority of the resident landowners or of the owners of three fifths of the land therein, approved by the report of the viewers and affirmed by the clerk, permits a majority owner to raise only the issue of fact for the jury to determine as to the benefit to his lands; and should the jury find in favor of the objector, he is not entitled as a matter of right to have his land excluded, but it is for the judge to decide whether this may be done without injury to the district, and if not, he may order that such land be retained upon payment of the damages to be awarded by the jury, as in condemnation of lands; all other matters embodied in the report are subject to approval by the clerk, and review by the judge without the intervention of a jury, being questions of fact. Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913).

Proper Appeal Is Notice to Purchaser of Bond. — Where the owner of land in a drainage district has duly excepted under this section and again under § 156-75 and has appealed, the purchaser of bonds issued by the district takes with notice of the rights of the complaining party so excepting, and acquires the bonds subject thereto. Drainage Dist. No. 1 v. Parks, 170 N.C. 435, 87 S.E. 229 (1917).

Effect of Failure to Appeal. — Appeals are separately provided for under this section when the drainage district has been laid off, and under § 156-75 when the final act is passed upon; and where the complaining owner of land in the district has not entered an exception under either of these two sections as the statute provides, and bonds have been duly issued on the lands of the district for drainage purposes, and thereafter application has been made by the commissioners for the issuance of additional bonds, in the further proceedings he may not be permitted to go back and change the formation of the district and the classification and assessments already made, by attacking the reports of the engineers and viewers, and withdraw a large part of his lands from the district theretofore formed. Drainage Dist. No. 1 v. Parks, 170 N.C. 435, 87 S.E. 229 (1917).

Cited in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-67. Condemnation of land. — If it shall be necessary to acquire a right-of-way or an outlet over and through lands not affected by the drainage, and the same cannot be acquired by purchase, then and in such event the power of eminent domain is hereby conferred, and the same may be condemned. The owners of the land proposed to be condemned may be made parties defendant in the manner of an ancillary proceeding, and the procedure shall be substantially as provided by law for the condemnation of rights-of-way for railroads so far as the same may be applicable, and such damages as may be awarded as compensation shall be paid by the board of drainage commissioners out of the first funds which shall be available from the proceeds of sale of bonds or otherwise. (1909, c. 442, s. 7; C. S., s. 5325.)

§ 156-68. Complete survey ordered. — After the district is established the court shall refer the report of the engineer and viewers back to them to make a complete survey, plans, and specifications for the drains or levees or other improvements, and fix a time when the engineer and viewers shall complete and file their report, not exceeding 60 days. (1909, c. 442, s. 9; C. S., s. 5326.)

§ 156-69. Nature of the survey; conservation and replacement of fish and wildlife habitat; structures to control and store water. — The engineer and viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain, or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately plotted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established among the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse ditch, or channel is being widened, deepened, or straightened, it shall be accurately cross-sectioned so as to compute the number of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records, of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated towns or villages within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain, or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement, and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any other work required to be done.

The board of viewers shall consider the effect of the proposed improvements upon the habitat of fish and wildlife, and the laws and regulations of the Commission for Health Services. Their report shall include their recommendations and the estimated cost thereof, as to the conservation and replacement of fish and wildlife habitat, if they shall determine such shall be damaged or displaced by the proposed improvement. The board, to determine their recommendations, may consult governmental agencies, wildlife associations, individuals, or such other sources as they may deem desirable, to assist them in their considerations of and recommendations relating to, the conservation and replacement of fish and wildlife habitat.

The board of viewers shall consider the need for and feasibility of, the construction of structures which will do one or more of the following:

(1) Control the flow of water,

(2) Impound or store water and,

(3) Provide areas for conservation and replacement of fish and wildlife habitat.

If structures are recommended for any one or more of said purposes, their report shall include:

(1) Specifications therefor.

(2) Location thereof together with the description of the area of land needed for the purpose of said structure, i.e., water storage or impoundment, or fish and wildlife habitat.
(3) Estimate of cost thereof.

The report of the board of viewers shall set forth, in regard to the foregoing, the following information:

(1) The areas of land needed for construction and maintenance of:
    a. The canals and drainage system.
    b. Structures to:
        1. To control the water,
        2. Impound or store water and,
        3. To conserve and replace fish and wildlife habitat.
(2) Upon whose land such areas are located.
(3) The area of land necessary to be acquired from each landowner.

The map accompanying the report shall have shown thereon, the location of the areas of land needed for the construction and maintenance of the following:

(1) The canal and drainage system.
(2) Structures to:
    a. Control the flow of water
    b. Impound or store the water
    c. Conserve and replace fish and wildlife habitat.

The board of viewers may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of the State of North Carolina whereby such agency will furnish all or a part of the service necessary to obtain the information set forth in the preceding paragraph and in G.S. 156-68.

The board of viewers may accept such information as furnished by such agencies and include such information in their final report to the clerk.

The board of viewers and engineers of the district may use control or semicontrol, mosaic aerial photographs or other sources and stereoscopic or other methods, generally used and deemed acceptable by civil and drainage engineers for the purpose of obtaining the information required in this section and in lieu of a detailed ground survey. In the event a detailed ground survey is not made, only those ground markings need be made as the board of viewers deem necessary. The location of the proposed canals must be shown on the ground prior to actual construction. (1909, c. 442, s. 10; C. S., s. 5327; 1959, c. 597, s. 1; 1961, c. 614, ss. 5, 9; 1965, c. 1143, s. 1; 1973, c. 476, s. 128.)

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-70. Assessment of damages. — It shall be the further duty of the engineer and viewers to assess the damages claimed by anyone that are justly right and due to him for land taken or for inconvenience imposed because of the construction of the improvement, or for any other legal damages sustained. Such damages shall be considered separate and apart from any benefit the land would receive because of the proposed work, and shall be paid by the board of drainage commissioners when funds shall come into their hands. (1909, c. 442, s. 11; 1915, c. 238; 1917, c. 152, s. 16; C. S., s. 5328.)

Independent Action for Damages. — The principles that conclude parties to proceedings in the formation of drainage districts under the statute by final judgment, from a recovery of damages to their lands, applies to such as may have accrued in the laying out and the establishment of the district under the procedure prescribed, and does not prevent an injured proprietor, within or without the district, from maintaining his independent action to recover damages caused by an unauthorized and substantial departure from the scheme and plan established by the decrees and orders in the cause, nor where the damage complained of is attributable to the negligence of the company, or its officers or agents in carrying out the proposed work. Spencer v. Wills, 179 N. C. 175, 102 S.E. 275 (1920).

Permanent Damages Recoverable. — The whole of plaintiff's land was originally included in a drainage district to be established under the statutory provisions, but the final judgment so restricted and modified the survey, plat and boundaries as to exclude all except a comparatively small portion of the land, the preliminary survey showing that a canal would go through the land included as well as through the land, or a large part thereof, excluded by the final judgment. There was no evidence that ancillary proceedings for this outside land by condemnation had been resorted to and it was held, that the plaintiff, in his independent action, may elect to recover the permanent damages caused to his land. Sawyer v. Camden Run Drainage Dist., 179 N.C. 182, 102 S.E. 273 (1920).

Pendency of Proceedings as Notice to Landowners and Grantees. — The pendency of a proceeding to lay off a drainage district under the provisions of the statute is notice as to all the lands embraced in the district. And the grantees thereof are bound by the statutory requirements as to the procedure to recover damages to the lands, as were their grantors who were parties to the proceedings and who owned the lands at that time. Newby & White v. Board of Drainage Comm'rs, 163 N.C. 24, 79 S.E. 266 (1913).

Damage to Timber Included. — While under the drainage acts no assessments for benefits can be made against the owner of timber interests, only the land itself being liable, the owner of the land and of timber within the district, by the provision of the statute, when made a party to the proceedings and duly notified, is required to present his claim for the entire injury, inclusive of that to his timber, and the damages to the timber should thus be included and allowed in the final judgment in the proceedings. Beaufort County Lumber Co. v. Drainage Comm'rs, 174 N.C. 647, 94 S.E. 457 (1917). And if this is not done, grantees of the landowner cannot recover damages for the loss of the timber in an action against the commissioners.

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

§ 156-70.1. When title deemed acquired for purpose of easements or rights-of-way; notice to landowner; claim for compensation; appeal. — The district shall be deemed to have acquired title for the purpose of easements or rights-of-way to those areas of land identified in the final report of the board of viewers and as shown on the map accompanying said report, at the time said final report is confirmed by the clerk of the superior court.

The board of viewers shall cause notice as to the area or areas of land involved, to be given to each landowner so affected, which notice shall be in writing and mailed to the last known address of the landowner at least seven days prior to the hearing on the final report as provided by G.S. 156-73.

If the landowner desires compensation for the land areas so acquired by the district, claim for the value of the same shall be submitted to the board of viewers on or before the time of the adjudication upon the final report as provided for by G.S. 156-74.

If the board of viewers shall approve the claim, the amount so approved shall be added to the total cost of the district as estimated in said final report and this shall be done by amendment to the final report submitted to the clerk of the superior court on or before the adjudication provided for in G.S. 156-74.

If the board of viewers shall not approve said claim, the clerk of the superior court shall consider the claim and determine what in his opinion is a fair value and the amount so determined shall be shown in the said final report as amended and confirmed by said adjudication. The landowner or the drainage district may appeal from the decision of the clerk of the superior court, to the superior court, upon the question of the value of the land taken and such value shall be determined by a jury. The procedure for the appeal shall be in accordance with the provision of G.S. 156-75. (1959, c. 597, s. 2; c. 1085; 1965, c. 1143, s. 2.)

Applied in Taylor v. Askew, 17 N.C. App. 620, 195 S.E.2d 316 (1973).

§ 156-71. Classification of lands and benefits. — It shall be the further duty of the engineer and viewers to personally examine the land in the district and classify it with reference to the benefit it will receive from the construction of the levee, ditch, drain, or watercourse or other improvement. In the case of drainage, the degree of wetness on the land, its proximity to the ditch or a natural outlet, and the fertility of the soil shall be considered in determining the amount of benefit it will receive by the construction of the ditch. The land benefited shall be separated in five classes. The land receiving the highest benefit shall be marked "Class A"; that receiving the next highest benefit, "Class B"; that receiving the next highest benefit, "Class C"; that receiving the next highest benefit, "Class D," and that receiving the smallest benefit, "Class E." The holdings of any one landowner need not be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined. The total number of acres of each class in the entire district shall be obtained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the engineer and viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five mills per acre is assessed against the land in "Class A," four mills per acre shall be assessed against the land in "Class B," three mills per acre in "Class C," two mills per acre in "Class D," and one mill per acre in "Class E." This shall form the basis of the assessment of benefits to the lands for drainage purposes. In any district lands may be included which are not benefited for the agriculture or crop production, or slightly so, but which will receive benefit by improvement in health conditions, and as to such lands the engineer and viewers may assess each tract of land without regard to the ratio and at such a sum per acre as will fairly represent the benefit of such lands. Villages or towns or parts thereof and small parcels of land located outside thereof and used primarily for residence or other specific purposes, and which require drainage, may also be included in any drainage district which by reason of their improved conditions and the limited area in each parcel under individual ownership, it is impracticable to fairly assess the benefits to each separated parcel of land by the ratio herein provided, and as to such parcels of land the engineer and viewers may assess each parcel of land without regard to the ratio and at a higher rate per acre respectively by reason of the greater benefits. If the streets or other property owned by any incorporated town or village are likewise benefited by such drainage works, the corporation may be assessed in proportion to such benefits, which assessment shall constitute a liability against the corporation and may be enforced as provided by law.

The board of viewers may determine that some areas of the district will receive more benefits than other areas and if such is determined, the varying benefits shall be reflected in the manner of classification of benefits to each area and the tracts of land therein. (1909, c. 442, s. 12; C. S., s. 5329; 1923, c. 217, s. 1; 1961, c. 614, s. 7.)

Cross Reference. — See § 156-104 as to application of this section.

Classification Discretionary in Local Act. —The legislature, in authorizing the establishment of a drainage district, may very largely commit to the commissioners the exercise of their judgment as to what should be done in carrying out the general provisions specified by the statute; and the special act of the legislature creating the Gaston County Drainage Commission, c. 427, Public-Local Laws of 1911, thus construed, does not relieve a landowner therein from paying his authorized assessments for benefits solely because the commission failed to strictly and literally divide the lands into the number of classes therein set out. Mitchem v. Gaston County Drainage Comm'n, 182 N.C. 511, 109 S.E. 551 (1921).

Applied in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962).

Stated in In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-72. Extension of time for report. — In case the work is delayed by high water, sickness, or any other good cause, and the report is not completed at the time fixed by the court, the engineer and viewers shall appear before the court and state in writing the cause of such failure and ask for sufficient time in which to complete the work, and the court shall set another date by which the report shall be completed and filed. (1909, c. 442, s. 14; C. S., s. 5330.)

§ 156-73. Final report filed; notice of hearing. — When the final report is completed and filed it shall be examined by the court, and if it is found to be in due form and in accordance with the law it shall be accepted, and if not in due form it may be referred back to the engineer and viewers, with instructions to secure further information, to be reported at a subsequent date to be fixed by the court. When the report is fully completed and accepted by the court a date not less than 20 days thereafter shall be fixed by the court for the final hearing upon the report, and notice thereof shall be given by publication in a newspaper of general circulation in the county and by posting a written or printed notice on the door of the courthouse and at five conspicuous places throughout the district, such publication to be made once a week for at least three consecutive weeks before the final hearing. During this time a copy of the report shall be on file in the office of the clerk of the superior court, and shall be open to the inspection of any landowner or other persons interested within the district. (1909, c. 442, s. 15; C. S., s. 5331; 1959, c. 807, ss. 1, 2; 1963, c. 767, s. 2.)

When Publication Unnecessary. — It is not necessary to the validity of bonds issued by a drainage district, that the notice of the time of hearing objections to the final report was not published in some newspaper of general circulation in the county, when it appears that no newspaper was published therein, or elsewhere, which has a general circulation in the county, and that the landowners affected had actual and ample notice of such time and raised no objection. Board of Drainage Comm'rs v. Brett Eng'r Co., 165 N.C. 37, 80 S.E. 897 (1914).

§ 156-74. Adjudication upon final report. — At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs. Provided, that the Department of Natural Resources and Community Development may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

The court shall, at the time of consideration of said report, determine whether:

(1) The petitioners constitute a majority of the resident landowners, whose lands are adjudged to be benefited by the proposed construction work

as shown in the final report of the board of viewers and finally approved by the court; or

(2) The petitioners own three fifths of the land area which is adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court.

If the petitioners do not constitute either a majority of the resident landowners or own three fifths of the land as set out in subdivisions (1) or (2) above, then the proceedings shall be dismissed. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C. S., s. 5332; 1925, c. 122, s. 4; 1959, c. 1312, s. 1; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the fourth sentence of the first paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

Effect of Final Decree. — A final decree in proceedings to lay off a statutory drainage district is an adjudication that the benefits derived to the land within the district are more than the burdens assessed against it for such purpose. Banks v. Lane, 170 N.C. 14, 86 S.E. 713 (1915).

Failure to Object Is Waiver. — The question as to whether an owner of land within a drainage district has realized the benefits anticipated is eliminated when there is the establishment of the district upon the report; and where such owner remains silent or makes no objection or exception at the proper time as to the proceedings of the board, his silence is a waiver of any right he may have therein had, and the independent remedy by injunction is not open to him. Mitchem v. Gaston County Drainage Comm'n, 182 N.C. 511, 109 S.E. 551 (1921).

Where a drainage district has been duly laid off in conformity with the statute, and a landowner therein has not excepted to either the preliminary or final report, he may not after the appointment of the commissioners, be heard to complain that the benefits he is to receive are not as great as those he had contemplated. Griffin v. Board of Comm'rs, 169 N.C. 642, 86 S.E. 575 (1915).

§ 156-75. Appeal from final hearing. — Any landowner, party petitioner or the drainage district may, within 10 days after the ruling or adjudication by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. Such appeal shall be taken and prosecuted as provided in special proceedings. Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. In any appeal to the superior court in session or in chambers taken under this section or any other section or provision of the drainage laws of the State, general or local, the same shall have precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the order in which the same shall be heard shall be determined by the court in the exercise of a sound discretion. (1909, c. 442, s. 17; 1911, c. 67, s. 3; C. S., s. 5333; 1923, c. 217, s. 2; 1969, c. 192, s. 1; 1973, c. 108, s. 96.)

Cross References. — See § 156-104 as to application of this section. See also note to § 156-66.

In General. — This section providing for an appeal upon exception to the final report by an owner of lands in a drainage district laid off under the provisions of the statute necessarily refers to the formation of the district and the assessments of the lands embraced in it. Wayne County Drainage Dist. No. 1 v. Parks, 170 N.C. 435, 87 S.E. 229 (1917).

Authority of Referee. — Where, by consent of the parties to an action, the court has ordered a referee for hearing and determining "all matters in controversy," and the controversy has arisen upon exceptions taken by a landowner to the final report on the plan and assessments made in forming a drainage district, by this section, the complaining party may not successfully except to the authority of the referee in passing upon questions therein arising which have been referred to him. Wayne County Drainage Dist. No. 1 v. Parks, 170 N.C. 435, 87 S.E. 229 (1917).

Appeal Only upon Exceptions Filed Below. —An appeal from the final order of the clerk in establishing a drainage district under the provisions of this section is heard only upon the exceptions thereto filed as to issues of law or fact. In re Big Cold Water Drainage Dist., 162 N.C. 127, 78 S.E. 14 (1913); Shelton v. White, 163 N.C. 90, 79 S.E. 427 (1913). And it is sufficient that the clerk has found as a fact that the allegations set out in the petition are true, if these allegations are sufficient, and distinctly and clearly made. In re Big Cold Water Drainage Dist., 162 N.C. 127, 78 S.E. 14 (1913).

Cited in In re Drainage of Ahoskie Creek, 257 N.C. 337, 125 S.E.2d 908 (1962); In re Drainage of Ahoskie Creek, 261 N.C. 407, 134 S.E.2d 642 (1964).

§ 156-76. Compensation of board of viewers. — The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the Department of Natural Resources and Community Development and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall be in such amount per day as may be fixed by the clerk of the superior court for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; C. S., s. 5334; 1925, c. 122, s. 4; 1959, c. 288; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 156-77. Account of expenses filed. — The engineer and viewers shall keep an accurate account and report to the court the name and number of days each person was employed on the survey and the kind of work he was doing, and any expenses that may have been incurred in going to and from the work, and the cost of any supplies or material that may have been used in making the survey. (1909, c. 442, s. 13; C. S., s. 5335.)

§ 156-78. Drainage record. — The clerk of the superior court shall provide a suitable book, to be known as the "Drainage Record," in which he shall transcribe every petition, motion, order, report, judgment, or finding of the board in every drainage transaction that may come before it, in such a manner as to make a complete and continuous record of the case. Copies of all the maps and profiles are to be furnished by the engineer and marked by the clerk "official copies," which shall be kept on file by him in his office, and one other copy shall be pasted or otherwise attached to his record book. (1909, c. 442, s. 18; C. S., s. 5336.)

Purpose of Record Book. — Upon the filing of the final report by the viewers, etc., in a proceeding to establish a drainage district under the provisions of the statute, a record is required by the statute to be kept in a book for the purpose, giving all interested in the proceedings notice of all that has been done materially affecting them; and when they have failed to make objection within three years, semble, they have lost their right to object, by the delay. Griffin v. Board of Comm'rs, 169 N.C. 642, 86 S.E. 575 (1915).

§ 156-78.1. Municipalities. — (a) Any municipality may participate in drainage district works or projects upon mutually agreeable terms relating to such matters as the construction, financing, maintenance and operation thereof.

(b) Any municipality may contribute funds toward the construction, maintenance and operation of drainage district works or projects, to the extent that such works or projects:

(1) Provide a source of municipal water supply for the municipality, or protect an existing source of such supply, enhance its quality or increase its dependable capacity or quantity, or implement or facilitate the disposal of sewage of the municipality; or

(2) Protect against or alleviate the effects of floodwater or sediment damages affecting, or provide drainage benefits for property owned by the municipality or its inhabitants.

(c) Municipal expenditures for the aforesaid purposes are declared to be for necessary expenses. Municipalities may enter continuing contracts, some portion or all of which may be performed in an ensuing year, agreeing to make periodic payments in ensuing fiscal years to drainage districts in consideration of benefits set forth in subsection (b) (2) of this section, but no such contract may be entered into unless sufficient funds have been appropriated to meet any amount to be paid under the contract in the fiscal year in which the contract is made. The municipal governing body shall, in the budget ordinance of each ensuing fiscal year during which any such contract is in effect, appropriate sufficient funds to meet the amount to be paid under the contract in such ensuing fiscal year. The statement required by G.S. 160-411.1 to be printed, written or typewritten on all contracts, agreements, or requisitions requiring the payment of moneys shall be placed on such a continuing contract only if sufficient funds have been appropriated to meet the amount to be paid under the contract in the fiscal year in which the contract is made.

(d) The provisions of this section are permissive. If a municipality does not participate in accordance with the provisions of this section, then the other provisions of Subchapter III shall apply and be followed. (1961, c. 614, s. 10.)

Editor's Note. — Section 160-411.1, referred to in this section, was repealed by Session Laws 1971, c. 780, s. 13. See now § 159-28.

ARTICLE 6.

Drainage Commissioners.

§ 156-79. Election and organization under original act. — After the drainage district has been declared established, as aforesaid, and the survey and plan therefor approved, the court shall appoint three persons, who shall be designated as the board of drainage commissioners. Such drainage commissioners shall first be elected by the owners of land within the drainage or levee district, or by a majority of same, in such manner as the court shall prescribe. The court shall appoint those receiving a majority of the votes. If any one or more of such proposed commissioners shall not receive the vote of a majority of such landowners the court shall appoint all or the remainder from among those voted for in the election. Any vacancy thereafter occurring shall be filled by the clerk of the superior court. Such three drainage commissioners, when so appointed, shall be immediately created a body corporate under the name and style of "The Board of Drainage Commissioners of .... District," with the right to hold property and convey the same, to sue and be sued, and shall possess such other powers as usually pertain to corporations. They shall organize by electing from among their number a chairman and a vice-chairman. They shall also elect a secretary, either within or without their body. Such board of drainage commissioners shall adopt a seal, which they may alter at pleasure. The board of drainage commissioners shall have and possess such powers as are herein granted. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C. S., s. 5337; 1947, c. 273; 1963, c. 767, s. 3.)

Local Modification. — Columbus, Chadburn Drainage District: 1939, c. 70; 1953, c. 1020; Hyde, Mattamuskeet Lake District: 1909, c. 509; Pub. Loc. 1927, c. 407; Iredell, Davidson Creek Drainage District: 1933, c. 466.

See also, Local Modification under § 156-56.

Individual Acts of Officials Do Not Bind District. — A drainage district is a corporation and as any other corporation, public or private, cannot be bound by the acts of its officials or agents acting separately or individually. Davenport v. Pitt County Drainage Dist. No. 2, 220 N.C. 237, 17 S.E.2d 1 (1941).

Conferring Special Rights on One Landowner. — The board of drainage commissioners, being a quasi-public corporation, created for the "public benefit," the powers usually pertaining to such corporations would not authorize a drainage district to enter into a contract that would give special or particular rights or claims to one landowner in the drainage district that is not enjoyed by all landowners similarly situated. Davenport v. Pitt County Drainage Dist. No. 2, 220 N.C. 237, 17 S.E.2d 1 (1941).

Appointment of Commissioners under Special Act. — As to appointment of commissioners for particular drainage district established under special act, see State ex rel. Mann v. Gibbs, 156 N.C. 44, 72 S.E. 82 (1911).

§ 156-80. Name of districts. — The name of such drainage district shall constitute a part of its corporate name; for illustration, the board of drainage commissioners of Mecklenburg Drainage District, No. 1. In the naming of a drainage district the clerk of the court, notwithstanding the name given in the petition, shall so change the name as to make it conform to the county within which the district, or the main portion of the district, is located, and such district shall also be designated by number, the number to indicate the number of districts petitioned for in the county. For illustration, the first district organized in Mecklenburg County would be Mecklenburg County Drainage District, No. 1; the name of the second would be Mecklenburg County Drainage District, No. 2; the fifth one organized would be Mecklenburg County Drainage District, No. 5: Provided, that so much of this section as provides for numbering the districts in each county shall not apply to districts in which bonds have been issued and sold prior to the fifth day of March, 1917. (1909, c. 442, s. 19; 1917, c. 152, s. 17; C. S., s. 5338.)

§ 156-81. Election and organization under amended act. — (a) Method of Election. — In the election of drainage commissioners by the owners of land, each landowner shall be entitled to cast the number of votes equaling the number of acres of land owned by him and benefited, as appears by the final report of the viewers. Each landowner may vote for the names of three persons for commissioners. If any person or persons in any district shall own land in any district containing an area greater than one half of the total area in the district, such owner shall only be permitted to elect two of the drainage commissioners, and a separate election shall be held under the direction of the clerk by the minority landowners, who shall elect one member of the drainage commissioners.

In lieu of the above method of election of drainage commissioners, the clerk of the superior court may, in his discretion, appoint such drainage commissioners and such drainage commissioners so appointed by the clerk shall have the same authority as if they had been elected by the method above described.

(b) Organization. — Immediately after the election of the board of drainage commissioners, and after the members of the board shall be appointed by the clerk, the clerk of the court shall notify each of them in writing to appear at a certain time and place within the county and organize. The clerk of the superior court shall appoint one of the three members as chairman of the board of drainage commissioners, and in doing so he shall consider carefully and impartially the respective qualifications of each of the members for the position.

(c) Term of Office. — The term of service of the members of the board of drainage commissioners so elected and appointed shall begin immediately after their organization. One commissioner shall serve for one year, one for two years, and the other for three years, the term to be computed from the first day of October following their organization. The members so serving for one, two, and three years, respectively, shall be designated by the clerk of the court or designated by lot among the members, in the discretion of the clerk. Thereafter each member shall be elected for three years. In the year when the term of any member or members shall expire the clerk of the court shall provide for an election of their successors to be held on the second Monday in August preceding the expiration of their term on the thirtieth day of September. The clerk of the court shall record in the drainage record the date of election, the members elected, and the beginning and expiration of their term of office.

(d) Vacancies Filled. — If a vacancy shall occur in the office of any commissioner by death, resignation, or otherwise, the remaining two members are to discharge the necessary duties of the board until the vacancy shall be filled; and if the vacancy shall be in the office of chairman or secretary, the two remaining members may elect a secretary, and the clerk shall appoint one of the two remaining members to act as chairman to hold until the vacancy in the board shall be filled. The clerk shall keep a similar record of any election to fill vacancies, and the member or members shall be elected in like manner as the original members, and shall serve until the expiration of the term of his predecessor. The secretary of the board of drainage commissioners shall promptly notify the clerk of the superior court of any vacancy in the board.

(e) Failure to Elect. — If for any reason the clerk of the court shall fail to provide for an election of drainage commissioners on the second Monday in August to succeed those whose terms will expire on the thirtieth day of September, the clerk shall have authority at the most convenient date thereafter to provide for such election, and in the meantime the incumbents shall continue to hold their office as commissioners until their successors are elected and qualified. The term of office of boards of drainage commissioners heretofore elected and appointed shall expire on the thirtieth day of September, 1917, and their successors shall be elected on the second Monday in August, 1917, in the manner provided by law.

(f) Meetings. — The board shall meet once each month at a stated time and place during the progress of drainage construction, and more often if necessary. After the drainage work is completed, or at any time, the chairman shall have the power to call special meetings of the board at a certain time and place. The chairman shall also call a meeting at any time upon the written request of the owner of a majority in area of the land in the district.

(g) Compensation. — The chairman of the board of drainage commissioners shall receive compensation and allowances as fixed by the clerk of the superior court. In fixing such compensation and allowances, the clerk shall give due consideration to the duties and responsibilities imposed upon the chairman of the board. The other members of the board shall receive a per diem not to exceed twenty-five dollars ($25.00) a day, while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The secretary of the board shall receive such compensation and expense allowances as may be determined by the board.

The chairman and members of the board of drainage commissioners shall also receive their actual travel and subsistence expenses while engaged in attendance upon meetings of the board, or in the discharge of duties imposed by the board. The compensation and expense allowances as herein set out shall be paid from the assessments made annually for the purpose of maintaining the canals of the drainage district, or from any other funds of the district.

(h) Application of Section. — The provisions of this section shall apply to all drainage districts now or hereafter existing in this State, without regard to the date of organization, whether before or after April 14, 1949.

(i) Appointment by Clerk of Superior Court as Alternative to Election. — In lieu of the methods of election and filling of vacancies in the position of drainage commissioner as provided in G.S. 156-79 and this section, the clerk of the superior court may, in his discretion, appoint such drainage commissioners and fill such vacancies, and such drainage commissioners so appointed by the clerk shall have the same authority and responsibility as if they had been elected or appointed as provided under G.S. 156-79 or this section. (1917, c. 152, s. 5; 1919, cc. 109, 217; C. S., s. 5339; 1947, c. 935; 1949, c. 956, ss. 1-3; 1957, c. 912, s. 1; 1975, c. 494.)

Local Modification. — Hyde, Mattamuskeet Drainage District: C. S. 5339; Pitt: 1935, c. 469, s. (4a); 1939, c. 350; Pitt, Drainage District No. 1: 1965, c. 746, s. 1.

Editor's Note. — The 1975 amendment substituted "twenty-five dollars ($25.00)" for "twelve dollars ($12.00)" in the third sentence of subsection (g).

Where one of three drainage commissioners dies, the two surviving have authority, until the election and qualification of their successors, to levy an additional assessment against the lands of the district necessary to discharge the obligations of the district. Peoples Loan & Sav. Bank v. King, 212 N.C. 349, 193 S.E. 663 (1937).

§ 156-81.1. Treasurer. — The clerk of the superior court for the county where the district was organized, shall appoint a treasurer for the drainage district for a term not to exceed 12 months. The treasurer so appointed may be a member of the board of commissioners of the district or some other person deemed competent, and shall furnish bond as may be required by the said clerk of the superior court. The treasurer shall continue in office until a successor has been appointed and qualified.

All references in Subchapter III of Chapter 156 of the General Statutes of North Carolina, to "treasurer" or "county treasurer" or "county auditor" are hereby amended to refer exclusively to the treasurer appointed as hereinbefore provided. (1963, c. 767, s. 4.)

Local Modification. — Hyde: 1967, c. 1010.

§ 156-82. Validation of election of members of drainage commission. — All irregularities caused by failure of any officer whose duty it was to provide for the election of a member or members of board of drainage commissioners of any drainage district, or the failure of any candidate to make a deposit as may be required by law, shall not invalidate such election where the following facts appear affirmatively:

(1) That said election was held at the time and place prescribed by law.
(2) That a ballot box was provided for the ballots cast for drainage commissioner.
(3) That the ballots were canvassed and the results declared by the judge of the general election.
(4) That the candidate receiving the greatest number of votes was declared elected.
(5) That no candidate for election as a member of board of drainage commissioners made any deposit as prescribed by law.
(6) That the candidate receiving the majority votes at said election has already qualified and is acting as such drainage commissioner.

This section shall not apply to any election contested before March 9, 1921. (1921, c. 210; C. S., s. 5339(a).)

§ 156-82.1. Duties and powers of the board of drainage commissioners.—(a) The board of drainage commissioners shall proceed with the levying of assessments, issuance of bonds and construction of canals, water retardant structures and other improvements and acquisition of equipment as approved by the court in the adjudication upon the final report of the board of viewers, either in the creation of the district or in subsequent proceedings authorized by Article 7B.

(b) The commissioners shall maintain the canals, water retardant structures, and all other improvements and equipment of the district.

(c) The commissioners, with the approval of the clerk of the superior court, may use surplus funds in such manner as they deem best for (i) the maintenance of the improvements, (ii) construction or enlargement of canals and water retardant structures, or other improvements or equipment, (iii) replacement or acquisition of equipment or structures, and (iv) for payment of any or all operating expenses including salaries, fees and costs of court.

The term "surplus funds" is defined to mean any funds remaining after the payment of those items set forth specifically in the certificate of assessment, as well as funds provided in said certificate for maintenance and contingencies, and also, shall include maintenance and any other funds which the said commissioners may have on hand and which are not necessary for the payment of the bonds and interest thereon which have been issued by the said district.

(d) The board of commissioners may agree, or contract, with any agency of the government of the United States or of North Carolina for such engineering or other services as may be provided by such agency.

(e) The board of commissioners may, in its discretion, release areas taken for rights-of-way if it determines, after the construction of the canals, that such are not needed for the purpose of the district. The release must be approved by the clerk of the superior court and such release shall be filed in the proceedings by virtue of which the district was created.

(f) The board of drainage commissioners shall have all the duties and powers as set forth and imposed upon them by the various sections of this Subchapter and all others which are necessary to promote the purposes of the district.

(g) The board of commissioners may authorize the use of stored or impounded water for recreational purposes. They may acquire title, by gift or purchase, but not by condemnation, of land to be used in conjunction with the stored and impounded water, for the development of recreational facilities.

The said commissioners are not authorized to use funds obtained from assessments upon the lands within the drainage district, for the purposes of the acquisition and development of recreational facilities. They are authorized to issue revenue bonds or notes, for the acquisition of land and construction and development of recreational facilities. The funds received from the use of the said recreational facilities, may be pledged for the payment of said revenue bonds and notes.

The terms and conditions of the issuance and payment of the said revenue bonds or notes, must be approved by the clerk of the superior court who has jurisdiction of the said drainage district.

The commissioners are authorized to enter into a contract with persons, association of persons or municipal or private corporations, for the operation of recreational facilities, owned by the drainage district. The contract may be entered into by negotiation or by award to the highest bidder at a public rental to be advertised as directed by the clerk of the superior court. The terms of the contract must be approved by the clerk of the superior court who has jurisdiction of the said drainage district.

(h) The commissioners may enter into a contract with a municipality or other nonprofit organizations, for the joint use of a facility for the impoundment or storage of water. The contract must be approved by the clerk of the superior court who has jurisdiction of the drainage district.

(i) All improvements constructed and acquired under the provisions of this Subchapter shall be under the control and supervision of the board of drainage commissioners. It shall be their duty to keep all improvements in good repair. (1961, c. 614, s. 2; 1965, c. 1143, s. 3.)

ARTICLE 7.

Construction of Improvement.

§ 156-83. Superintendent of construction. — The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Department of Natural Resources and Community Development, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner.

The board of drainage commissioners may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of North Carolina whereby such agency may furnish the service required of the superintendent of construction. If this is done by the board, any reference in this Chapter to the superintendent of construction and/or his duties shall include or be exercised by the said agency subject to the approval of the board of commissioners. (1909, c. 442, s. 20; C. S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 5; 1959, c. 597, s. 3; 1961, c. 1198; 1963, c. 767, s. 5; 1973, c. 1262, s. 23; 1977, c. 771, s. 4.)

Local Modification. — Hyde: 1957, c. 714.

Cross Reference. — See § 156-104 as to application of this section.

Editor's Note. — The 1977 amendment substituted "Natural Resources and Community Development" for "Natural and Economic Resources" in the second sentence of the first paragraph.

Session Laws 1977, c. 771, s. 22, contains a severability clause.

§ 156-84. Letting contracts. — The board of drainage commissioners shall cause notice to be given of the letting of the contract. The notice shall be posted at the courthouse door in the county wherein the district was organized. Notice shall be posted no less than 15 days prior to the opening of the bids and shall be published at least once a week for two consecutive weeks immediately prior to the opening of the bids, in some newspaper published in the county wherein such improvement is located, if such there be, and such additional publication elsewhere as they may deem expedient, of the time and place of letting the work of construction of such improvement, and in such notice they shall specify the approximate amount of work to be done and the time fixed for the completion thereof; and on the date appointed for the letting they, together with the superintendent of construction, shall convene and let to the lowest responsible bidder, either as a whole or in sections, as they may deem most advantageous for the district, the proposed work. No bid shall be entertained that exceeds the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. They shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by doing so. The successful bidder shall be required to enter into a contract with the board of drainage commissioners and to execute a bond for the faithful performance of such contract, with sufficient sureties, in favor of the board of drainage commissioners for the use and benefit of the levee or drainage district, in an amount equal to no less than 25 nor more than one hundred per centum (100%) of the estimated cost of the work awarded to him. In canvassing bids and letting the contract, the superintendent of construction shall act only in an advisory capacity to the board of drainage commissioners. The contract shall be based on the plans and specifications submitted by the viewers in their final report as confirmed by the court, the original of which shall remain on file in the office of the clerk of the superior court and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under the authority of the board of drainage commissioners and on the day theretofore appointed for opening the bids. The drainage commissioners shall have power to correct errors and modify the details of the report of the engineer and viewers if, in their judgment, they can increase the efficiency of the drainage plan and afford better drainage to the lands in the district without increasing the estimated cost submitted by the engineer and viewers and confirmed by the court. (1909, c. 442, s. 21; 1911, c. 67, s. 4; C. S., s. 5341; 1959, c. 806; 1963, c. 767, s. 6.)

Power of Commissioners Is Discretionary. —This section directs that the levee or drainage commissioners shall convene with the superintendent of construction and let the work contemplated to the "lowest responsible bidder," thereby conferring a discretionary power in adjudging the responsibility of the bidder, in all respects, with which the courts will not interfere in the absence of undue influence or a procurement by fraud. Sanderlin v. Luken, 152 N.C. 738, 68 S.E. 225 (1910).

Acceptance of Work by Commissioners. — The acceptance of the work of the contractors as a compliance on their part with the contract is a judicial act of the board of commissioners and cannot be questioned except for fraud or collusion, and then only to make the commissioners personally and individually liable. Craven v. Board of Comm'rs, 176 N.C. 531, 97 S.E. 470 (1918).

Section Authorizes Only Minor Changes in Report. — The authority given by this section to correct errors and modify the details of the report comtemplates only such minor changes of detail as may occur in carrying out the plans, etc., specified in the final report and not a substantial departure therefrom. Griffin v. Board of Comm'rs, 169 N.C. 642, 86 S.E. 575 (1915).

§ 156-85. Monthly estimates for work and payments thereon; final payment. — The superintendent in charge of construction shall make monthly estimates of the amount of work done, and furnish one copy to the contractor and file the other with the secretary of the board of drainage commissioners; and the commissioners shall, within five days after the filing of such estimate, meet and direct the secretary to draw a warrant in favor of such contractor for ninety per centum (90%) of the work done, according to the specifications and contracts; and upon the presentation of such warrant, properly signed by the chairman and secretary, to the treasurer of the drainage fund, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the drainage fund as before provided. (1909, c. 442, s. 22; C. S., s. 5342.)

§ 156-86. Failure of contractors; reletting. — If any contractor to whom such work has been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the board of drainage commissioners against such contractor and his bond in the superior court for damages sustained by the levee or drainage district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting. (1909, c. 442, s. 23; 1911, c. 67, s. 5; C. S., s. 5343.)

§ 156-87. Right to enter upon lands; removal of timber. — In the construction of the work the contractor shall have the right to enter upon the lands necessary for this purpose and the right to remove private or public bridges or fences and to cross private lands in going to or from the work. In case the right-of-way of the improvement is through timber the owner thereof shall have the right to remove it, if he so desires, before the work of construction begins, and in case it is not removed by the landowner it shall become the property of the contractor and may be removed by him. (1909, c. 442, s. 24; C. S., s. 5344.)

Cross Reference. — As to recovery of damages for timber, see note to § 156-70.

Opinions of Attorney General. — Colonel Paul S. Denison, 40 N.C.A.G. 197 (1969).

Purpose of Section. — The drainage acts contemplate that all damages to the owner of lands shall be assessed, including the taking of his timber necessary to carry out its plans, this section being designed to give the owner of the timber the privilege of taking such timber if he so elects. Beaufort County Lumber Co. v. Drainage Comm'rs, 174 N.C. 647, 94 S.E. 457 (1917).

Not an Unlawful Taking. — The objection that this section is an unconstitutional taking of the owner's timber and giving it to the contractor, without compensation cannot be maintained. Beaufort County Lumber Co. v. Drainage Comm'rs, 174 N.C. 647, 94 S.E. 457 (1917).

§ 156-88. Drainage across public or private ways. — Where any public ditch, drain or watercourse established under the provisions of this Subchapter crosses or, in the opinion of the board of viewers, should cross a public highway under the supervision of the Department of Transportation the actual cost of constructing the same across the highway shall be paid for from the funds of the drainage district, and it shall be the duty of the Department of Transportation, upon notice from the court, to show cause why it should not be required to repair or remove any old bridge and/or build any new bridge to provide the minimum drainage space determined by the court; whereupon the court shall hear all evidence pertaining thereto and shall determine whether the Department of Transportation shall be required to do such work, and whether at its own expense or whether the cost thereof should be prorated between the Department of Transportation and the drainage district. Either party shall have the right of appeal from the clerk to the superior court and thence to the appellate division, and should the court be of the opinion that the cost should be prorated then the percentage apportioned to each shall be determined by a jury.

Whenever the Department of Transportation is required to repair or remove any old bridge and/or build any new bridge as hereinbefore provided, the same may be done in such manner and according to such specifications as it deems best, and no assessment shall be charged the Department of Transportation for any benefits to the highway affected by the drain under the same, and such bridge shall thereafter be maintained by and at the expense of the Department of Transportation.

Where any public ditch, drain, or watercourse established under the provisions of this Subchapter crosses a public highway or road, not under the supervision of the Department of Transportation, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the funds of the drainage district. Whenever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land, to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the commissioners of the county where the road is located, of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a public highway or road not under the supervision of the Department of Transportation, by reason of enlarging any watercourse, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board or authority which by law is required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private roads; provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the Department of Transportation or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C. S., s. 5345; 1947, c. 1022; 1953, c. 675, s. 26; 1957, c. 65, s. 11; 1969, c. 44, s. 78; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

Editor's Note. — The 1977 amendment substituted "Department of Transportation" for "Board of Transportation" throughout the section.

§ 156-89. Drainage across railroads; procedure. — Whenever the engineer and the viewers in charge shall make a survey for the purpose of locating a public levee or drainage district or changing a natural watercourse, and the same would cross the right-of-way of any railroad company, it shall be the duty of the owner in charge of the work to notify the railroad company, by serving written notice upon the agent of such company or its lessee or receiver, that they will meet the company at the place where the proposed ditch, drain, or watercourse crosses the right-of-way of such company, the notice fixing the time of such meeting, which shall not be less than 10 days after the service of the same, for the purpose of conferring with the railroad company with relation to the place where and the manner in which such improvement shall cross such right-of-way. When the time fixed for such conference shall arrive, unless for good cause more time is agreed upon, it shall be the duty of the viewers in charge and the railroad company to agree, if possible, upon the place where and the manner and method in which such improvement shall cross such right-of-way. If the viewers in charge and the railroad company cannot agree, or if the railroad company shall fail, neglect, or refuse to confer with the viewers, they shall determine the place and manner of crossing the right-of-way of the railroad company, and shall specify the number and size of openings required, and the damages, if any, to the railroad company, and so specify in their report. The fact that the railroad company is required by the construction of the improvement to build a new bridge or culvert or to enlarge or strengthen an old one shall not be considered as damages to the railroad company. The engineer and viewers shall also assess the benefits that will accrue to the right-of-way, roadbed, and other property of the company by affording better drainage or a better outlet for drainage, but no benefits shall be assessed because of the increase in business that may come to the road because of the construction of the improvement. The benefits shall be assessed as a fixed sum, determined solely by the physical benefit that its property will receive by the construction of the improvement, and it shall be reported by the viewers as a special assessment, due personally from the railroad company as a special assessment; it may be collected in the manner of an ordinary debt in any court having jurisdiction. (1909, c. 442, s. 26; C. S., s. 5346.)

Mandamus against County Commissioners. — A judgment in proceedings for mandamus against the county commissioners to compel them to pay an assessment of a drainage district for benefit to the public roads therein, that the defendants pay the same, with interest and cost, out of the first moneys coming into their hands and not otherwise appropriated, is valid and not in violation of the Constitution or statutes relating to taxation. Cabarrus County Drainage Dist. No. 2 v. Board of Comm'rs, 174 N.C. 738, 94 S.E. 530 (1917).

§ 156-90. Notice to railroad. — The clerk of the superior court shall have notice served upon the railroad company of the time and place of the meeting to hear and determine the final report of the engineer and viewers, and the railroad company shall have the right to file objections to the report and to appeal from the findings of the board of commissioners in the same manner as any landowner. But such an appeal shall not delay or defeat the construction of the improvement. (1909, c. 442, s. 27; C. S., s. 5347.)

§ 156-91. Manner of construction across railroad. — (a) Duty of Railroad. — After the contract is let and the actual construction is commenced, if the work is being done with a floating dredge, the superintendent in charge of construction shall notify the railroad company of the probable time at which the contractor will be ready to enter upon the right-of-way of such railroad and construct the work thereon. It shall be the duty of the railroad to send a representative to view the ground with the superintendent of construction and arrange the exact time at which such work can be most conveniently done. At the time agreed upon the railroad company shall remove its rails, ties, stringers, and such other obstructions as may be necessary to permit the dredge to excavate the channel across its right-of-way. The work shall be so planned and conducted as to interfere in the least possible manner with the business of the railroad.

(b) Utilities Commission to Settle. — If the superintendent of construction and the railroad company shall not be able to agree as to the exact time at which such work can be done, including the time of beginning and the time to be consumed in such work, either party may give written notice thereof to the chairman of the Utilities Commission of the State, and thereupon the Utilities Commission shall cause an investigaton to be made, and, after hearing both parties, shall fix the time of beginning such work and the time to be consumed in the work of construction, and the final determination of the Utilities Commission thereon shall be binding upon the superintendent of construction representing the district and the railroad company, and the work shall be done in such time as may be fixed by the Utilities Commission.

(c) Penalty for Delay. — In case the railroad company refuses and fails to remove its track and allow the dredge to construct the work on its right-of-way, it shall be held as delaying the construction of the improvement, and such company shall be liable to a penalty of twenty-five dollars ($25.00) per day for each day of delay, to be collected by the board of drainage commissioners for the benefit of the drainage district as in the case of other penalties. Such a penalty may be collected in any court having jurisdiction, and shall inure to the benefit of the drainage district.

(d) Payment of Expense. — Within 30 days after the work is completed an itemized bill for actual expenses incurred by the railroad company for opening its tracks shall be made and presented to the superintendent of construction of the drainage improvement. Such bill, however, shall not include the cost of putting in a new bridge or strengthening or enlarging an old one. The superintendent of construction shall audit this bill and, if found correct, approve the same and file it with the secretary of the board of drainage commissioners. The commissioners shall deduct from this bill the cost of the excavation done by the dredge on the right-of-way of the railroad company at the contract price, and pay the difference, if any, to the railroad company. (1909, c. 442, s. 28; 1911, c. 67, s. 7; C. S., s. 5348; 1933, c. 134, s. 8; 1941, c. 97, s. 1.)

§ 156-92. Control and repairs by drainage commissioners. — Whenever any improvement constructed under this Subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or watercourse in good repair, and for this purpose they may levy an assessment on the lands benefited by the maintenance or repair of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or watercourse in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or watercourse constructed or improved under the provisions of this Subchapter, and any person causing such injury shall be guilty of a misdemeanor, and upon conviction thereof may be fined in any sum not exceeding twice the damage or injury done or caused. (1909, c. 442, s. 29; C. S., s. 5349; 1947, c. 982, s. 1.)

Cross Reference. — As to improvement, renovation, etc., of canals and structures, see Article 7B of this Chapter.

Section Amended by Implication.—Sections 156-118 and 156-123 were added by Public Laws 1923, ch. 231 and had the effect of amending this section. This section authorizes the drainage commissioners to levy an assessment upon the lands in the district for the purpose of keeping up the drainage. The amending statutes provided that the commissioners could issue bonds instead of levying an assessment. In re Perquimans County Drainage Dist. No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961), decided prior to the repeal of §§ 156-118 to 156-120.

Assessments Authorized on Properties Benefited by Repairs. — It is the duty of the Commissioners to keep the drains and works of the districts in good repair. For this purpose they are authorized to levy assessments on the properties within the district benefited by the repairs. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

Provision Limiting Assessments. — A provision in the petition limiting the amount of assessments to be made on lands within a drainage district being formed under the provisions of the statute, which was not inserted in the final judgment rendered in due course, may not at a subsequent term be supplied by amendment, being also contrary to the statutory provisions and invalid. Mann v. Mann, 176 N.C. 353, 97 S.E. 175 (1918).

Meaning of Original Assessments. — Under the provisions of the statute creating the Mattamuskeet Drainage District the control thereof, after its completion, is continued in the board of drainage commissioners for the purpose of its maintenance, and authority is given it to levy assessments therefor on the lands benefited in the same manner and in the same proportion as the "original assessments" were made, and collected by the same officers as those by whom the State and county taxes are collected. It was held that the term "original assessments" refers to those made for construction work on bonds issued therefor, and the assessments for maintenance should be collected by the sheriff of the county for the purpose of maintenance, as taxes for general county purposes are to be collected by him. Drainage Comm'rs v. Davis, 182 N.C. 140, 108 S.E. 506 (1921).

Cited in Robeson County Drainage Dist. No. 4 v. Bullard, 229 N.C. 633, 50 S.E.2d 742 (1948).

§ 156-93. Construction of lateral drains. — The owner of any land that has been assessed for the cost of the construction of any ditch, drain, or watercourse, as herein provided, shall have the right to use the ditch, drain, or watercourse as an outlet for lateral drains from such land; and if the land be of such elevation that the owner cannot secure proper drainage through and over his own land, or if the land is separated from the ditch, drain, or watercourse by the land of another or others, and the owner thereof shall be unable to agree with such others as to the terms and conditions on which he may enter their lands and construct the drain or ditch, he may file his ancillary petition in such pending proceeding to the court, and the procedure shall be as now provided by law. (1909, c. 442, s. 30; 1915, c. 43, s. 1; 1917, c. 152, s. 3; C. S., s. 5350.)

ARTICLE 7A.

Maintenance.

§ 156-93.1. Maintenance assessments and contracts; engineering assistance, construction equipment, etc.; joint or consolidated maintenance operations; water-retardant structures; borrowing in anticipation of revenue. —(a) The board of drainage commissioners may annually levy maintenance assessments in the same ratio as the existing classification of the lands within the district. The amount of these assessments shall be determined by the board of drainage commissioners and must be approved by the clerk of the superior court prior to their annual levy. The proceeds of these assessments shall be used for the purpose of maintaining canals of the drainage district in an efficient operating condition and for the necessary operating expenses of the district as approved by the clerk of the superior court.

The board of drainage commissioners shall have the authority to employ engineering assistance, construction equipment, superintendents and operators for the equipment necessary for the efficient maintenance of the canals, or the maintenance may be done by private contract made after due advertisement as required for the original construction work.

(b) The board of drainage commissioners of a drainage district may join with the commissioners of one or more districts for the purpose of employing engineering assistance, equipment, superintendents and equipment operators for the maintenance of the canals in the several districts desiring to coordinate their maintenance operations and the drainage districts desiring to coordinate a common maintenance force may have a common office with the necessary employees for the furtherance of the joint operations for maintenance. The districts may coordinate their work without regard to county lines.

(c) The board of commissioners of a drainage district may, individually or jointly with the commissioners of other drainage districts, purchase, lease, rent, sell, or otherwise dispose of at public or private sale, equipment for the original construction or maintenance of the canals in the individual or joint districts or the said drainage districts may make contracts with private construction firms for the maintenance and construction of their canals. Contracts made with private construction companies are to be advertised as provided for the contract for the original construction of the canals.

The drainage districts may use the equipment owned by them for the purpose of maintenance of the canals and the construction of extensions to the system of canals in the individual or several drainage districts.

(d) The drainage districts desiring to consolidate their maintenance services and equipment may set up a board composed of one member from each district for the purpose of control and use of the personnel and equipment employed on a joint basis, and in all matters coming before the joint board, the representative of each district shall have a voting strength equal to the proportionate acreage of his drainage district as compared with the total acreage of the combined districts.

(e) The collection of the annual maintenance assessments shall be made by the county tax collector. The board of county commissioners of the county in which a drainage district is located shall upon the request of the board of drainage commissioners of the said district cause to be shown on the tax statement or notice issued by the county to its taxpayers the amount due the drainage district by the landowners in the same manner as other special assessments are shown thereon. This amount shall be collected by the county tax collector in the same manner as county taxes and deposited to the credit of the district in which the land is located.

(f) The provisions for maintenance as set forth in this Article and elsewhere in this Subchapter III shall include water-retardant structures and the operation of such.

(g) The board of commissioners may borrow money in anticipation of revenue from maintenance assessments, as hereinbefore provided for, from which assessments the loan shall be repaid. The amount which the commissioners may borrow shall not be limited to the revenues anticipated for any one year. The terms and provisions of such loan shall be approved by the clerk of the superior court which approval shall be requested in the form of a petition and order in the proceeding by virtue of which the district was organized. The proceeds of said loan shall be used only for purposes set forth in Article 7A of Chapter 156. (1949, c. 1216; 1959, c. 597, s. 4; 1961, c. 614, s. 8.)

Local Modification. — Beaufort: 1963, c. 142.

Quoted in In re Perquimans County Drainage Dist. No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961).

ARTICLE 7B.

Improvement, Renovation, Enlargement and Extension of Canals, Structures and Boundaries.

§ 156-93.2. Proceedings for improvement, renovation and extension of canals, structures and equipment. — The board of commissioners may construct, renovate, improve, enlarge and extend the drainage systems and water-retardant structures and any equipment of the district, by complying with the following provisions:

(1) The commissioners shall file with the clerk of the superior court in the county in which the district was organized, a petition which sets forth the need for the improvements requested and a general description of the proposed improvements.

(2) Upon the filing of the petition, the clerk shall then appoint a board of viewers with the same composition and qualifications as is required by G.S. 156-59. He shall direct the board of viewers to consider the proposals of the board of commissioners and report to him (i) whether or not the improvement proposed will benefit the lands sought to be benefited and (ii) whether or not the proposed improvement is practicable.

The board of viewers shall make their report to the clerk within 30 days after their appointment unless the time shall be extended by the court upon the showing of a meritorious cause for the extension.

(3) a. If the board of viewers shall report (i) that none of the improvement proposed will benefit the lands sought to be benefited, or (ii) that it is not practicable, the petition of the board of commissioners shall be dismissed and shall not be submitted again within six months thereafter.

b. If the board of viewers shall report (i) that part or all the improvement proposed will benefit the lands sought to be benefited and (ii) the proposed improvement is practicable, then the clerk shall fix a time and place for a hearing upon said report. The said hearing shall be no less than 20, nor more than 30, days after the filing of said report.

(4) Notice of said hearing shall be given as follows:

a. Posting and publication:
   1. Posting at the courthouse door of the county in which the proceeding is pending;
   2. Posting at five conspicuous places within the district;
   3. The notice shall be posted at least 20 days prior to said hearing;
   4. Publication in a newspaper with general circulation within the area once a week for three successive weeks.

b. Contents:
   1. The notice shall state the time and place for the hearing;
   2. Describe in general terms the improvements proposed;
   3. That the court will consider and adjudicate the report of the board of viewers.

(5) At the date appointed for the hearing the clerk shall hear and determine any objections that may be offered to the said report. The clerk may make such modifications and changes which tend to increase the benefits of the proposed work or improvement.

(6) a. If the clerk shall adjudicate that (i) none of the improvements proposed will benefit any of the lands sought to be benefited or (ii) that none of the improvements are practicable, he shall dismiss the proceedings and the petition shall not be submitted again within six months thereafter.

b. If the clerk shall approve the said report, he shall then direct the board of viewers to prepare a further and detailed report which shall include the following:
   1. Specific plans and profiles together with estimates of the cost of the work recommended by the said board of viewers and an estimate of all other costs including those incurred by the board of viewers;
   2. If directed by the clerk, a new property map of the district which shall show thereon the general location of each tract of land which will be benefited by the proposed work;
   3. A statement showing the classification of benefits to be received by the several tracts of lands. This classification shall be determined and shown in the same manner as is provided for in G.S. 156-71. The board of viewers may adopt the original classification. Only those lands to be benefited by the proposed work shall be classified for assessment.

The board of viewers shall have, insofar as applicable, the same powers and duties as relate to the final report as are required and provided in Article 5 by G. S. 156-69, 156-70, 156-70.1 and 156-71.

The board of viewers shall make their report to the clerk within 60 days after their appointment. The clerk may extend this time upon the showing of meritorious cause for the extension.

The expense of the board of viewers, their assistants, and all costs incurred by them shall be paid from any surplus funds of the district, as defined in this Subchapter, or if such are not sufficient, by the same means of financing as are available for such purposes when the district is originally organized. The estimate of the expenditures shall be shown in its report and all amounts of money expended shall be reimbursed when funds are available.

(7) Upon the filing of the said report, the clerk shall fix a time and a place for a hearing thereupon.

(8) The notice of the hearing upon said report shall be given in the same manner as required for the notice of the proposed work as required by the preceding subdivision (4) which relates to the preliminary hearing.

Also, a notice of said hearing shall be mailed at least 10 days prior to the hearing, to those landowners as their names appear upon the statement of classification of benefits filed with the report of the board of viewers and whose names and addresses are shown on the tax scrolls of the county wherein their land is situated. The attorneys for, or commissioners of, the district shall use due diligence to determine the said names and addresses from the tax scrolls.

The filing with the clerk of the superior court of a certificate by the attorney for, or the commissioners of, the district, that due diligence has been used to obtain the names and addresses from the tax scrolls and that notice has been mailed to those persons at the address shown, shall be sufficient showing that this provision has been complied with. The certificate shall state the names, addresses and dates to whom such notice was mailed.

(9) At the date set for the hearing any landowner may appear in person, or by counsel, and file his objections in writing to the report of the board of viewers. It shall be the duty of the clerk to carefully review the report of the board of viewers and the objections filed thereto and make such changes as are necessary to render substantial and equal justice to all landowners in the district.

If the clerk shall adjudicate that the benefits which will accrue to the lands affected are greater than the cost of the improvements, the report of the board of viewers shall be confirmed. The clerk shall then direct the commissioners of the district to proceed with the improvements as approved.

If, however, the clerk finds that the cost of the improvements is greater than the resulting benefits that will accrue to the lands affected, the clerk shall dismiss the proceedings.

(10) Any landowner, party petitioner or the drainage district may, within 10 days after the ruling or adjudication by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. Such appeal shall be taken and prosecuted as provided in special proceedings. Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. All of the terms and provisions of G.S. 156-75 shall apply to the appeal. (1961, c. 614, s. 1; 1969, c. 192, s. 2.)

Purpose of Article. — The legislature, when it enacted Subchapter III authorizing the establishment of drainage districts, made no provision for an alteration and enlargement of boundaries subsequent to the date of creation for the simple reason that the boundaries as finally determined had to include all lands benefited by the improvement, and the lands so benefited were required to be assessed for the benefits accruing. Hence no assessment could be levied either for original construction or for cost of maintenance on lands beyond the boundaries. In re Albermarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

The 1961 legislature, recognizing that lands not originally expected to receive benefit from works to be performed by a drainage district might, by changing conditions and the modification or enlargement and maintenance of the drains, receive benefits from work subsequently proposed to be done, made provision for the enlargement of boundaries of drainage districts. In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-93.3. Extension of boundaries. — The boundaries of a drainage district may be extended upon compliance with the requirements and procedures as follows:

(1) The request for extension shall be made by the board of commissioners of the district, in the form of a petition in the name of the drainage district, to the clerk of the superior court of the county wherein the district was originally organized. The proceeding may be ex parte or adversary.

(2) The area proposed to be included within the boundaries of the district must be either:

  a. Located upstream and adjacent to the existing boundary of the district and must have as its only source of drainage either:

    1. The canals of the district; or
    2. Natural or artificial drain ways which empty into or are benefited by the canals of the district; and
    3. Must be within the watershed of the existing district; or

  b. Adjacent to the existing boundary of the district and have a common outfall with the existing district.

(3) a. In the event the area meets the requirements of (2) a, it shall only be necessary for the petition to be filed by the board of commissioners of the district.

  b. In the event the area meets the requirement of (2) b of this section, the owners of fifty percent (50%) or more of the land area which it is proposed to include or forty percent (40%) or more of the resident landowners who will be benefited within such area, must join with and be petitioners with the commissioners of the existing district, asking for the extension of boundaries and inclusion of land within the existing district.

  Should the area proposed to be included within the boundary of the enlarged district embrace one or more existing drainage districts, the commissioners of any such district or districts may join in a petition to the court asking for the extension of boundaries of the existing district.

  The joinder in the petition by the commissioners of such drainage district in the name of the district shall have the effect of including in the petition all of the land within said existing drainage district to the same extent as if the petition had been signed individually by each landowner of the district. The total acreage in such district or districts shall be included as land in the petition in determining whether or not the requirements under this section have been complied with.

(4) Upon filing of the petition for extension of the boundaries, the clerk of the superior court shall appoint a board of viewers with the same composition and qualifications as is required by G.S. 156-59. The board of viewers shall examine the area proposed to be included within the boundaries of the district to determine whether or not, in their opinion, it is feasible and equitable to include said area within the boundaries of the district, and report their finding to the court. The report must be made within 30 days after the appointment of said board of viewers. The time for filing said report may be extended by the clerk upon a showing of a meritorious cause for the extension.

(5) If the board of viewers shall report that the proposed extension of boundary is not feasible or equitable, the petition shall be dismissed and shall not be submitted again until after six months from date of dismissal.

(6) a. If the board of viewers shall report that the proposed extension of boundary is feasible and equitable, then the clerk of the superior court shall order the board of viewers to make a further and

detailed report which shall include a map of the area that is proposed to be annexed which shall show:

1. Boundaries of the existing district;
2. Boundaries of the proposed extension;
3. A general location of each individual tract of land which will be benefited.

b. In the event no additional work is proposed, the board of viewers shall report the following:

1. The allocation of benefits derived from the existing canals, structures or other improvements, between the existing district and the area to be included within the boundaries of the existing district, which shall be a percentage figure and shall be the major factor for the determination of the requirements set forth in the succeeding paragraphs 2 and 3;
2. The amount of money, if any, which the owners of the land to be included within the district should pay for the use of the canals, structures or other improvements of the district;
3. The percent of the cost of maintenance and operating expenses which the owners of the land to be included, should pay;
4. Classification of the additional lands as to benefits derived from the existing canals, structures or other improvements of the district which shall be in accordance with the provisions of G.S. 156-71. The area of the existing district shall not be classified, unless directed by the clerk of the superior court;
5. The names and addresses of the landowners within the areas proposed to be included insofar as may be determined from the tax records of the county;
6. Such other information as may be appropriate or as may be directed by the clerk of the superior court.

c. In the event additional work is proposed, the report of the board of viewers shall also contain the information required in G.S. 156-93.2, as it applies to the final report of the board of viewers.

(7) The board of viewers shall file their detailed or final report within 60 days after their appointment. The time for filing of said report may be extended by the clerk upon a showing of meritorious cause for the extension.

(8) Upon the filing of said report those landowners in the area to be included who are not parties to the proceedings and who do not desire to sign the petition, shall be made parties defendant. Summons shall be served upon the defendants in the manner required for special proceedings. There shall be attached to and served with the summons, in lieu of a copy of the petition or final report, a statement which shall set forth (i) the purpose of the proceedings and (ii) that the report of the board of viewers is on file in the office of the clerk of the superior court and may be examined by persons interested.

(9) The attorney for, or the commissioners of, the district shall use due diligence to give notice to every landowner within the area proposed to be included, who has not signed the petition asking for such extension of boundaries and/or the proposed improvements.

The filing of a certificate by the attorney for, or the commissioners of, the district that due diligence has been used to notify each of said defendant landowners shown by the report of the board of viewers, either by personal service or by publication, shall be sufficient showing of compliance with this provision. The certificate shall contain the names of such landowners served personally, the date of service and the names of those served by publication and the date of service by publication.

(10) Upon filing of said certificate the clerk shall fix a time and place for a hearing upon said report, which date shall be no less than 20 days after filing of said certificate.

(11) Notice of said hearing shall be given as follows:

a. Posting and publication:

1. Posting at the courthouse door of the county in which the proceeding is pending;
2. Posting at five conspicuous places in the district and in the area to be included;
3. The notice shall be posted at least 20 days prior to the said hearing;
4. Publication in a newspaper with general circulation within the area once a week for three successive weeks;
5. Mailing a copy of the notice to those persons for whom an address is shown in the certificate filed by the attorney for, or commissioners of, the district.

b. Contents:

1. The notice shall state the time and place for the hearing;
2. Describe in general terms the area proposed to be included and work proposed, if any;
3. That the court will consider and adjudicate the report of the board of viewers.

(12) At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the board of viewers. It shall be the duty of the clerk to carefully review the report of the board of viewers and the objection filed thereto and make such changes as are necessary to render substantial and equal justice to all of the landowners and the existing district.

(13) The clerk shall, after making adjustments in the report of the board of viewers, if any, determine:

a. If the area(s) of land sought to be included, or any part thereof, is, or will be, benefited by the canals, structures or other improvements of the district.

b. If such area(s) should equitably be included within the boundary of the district because of the benefits received or to be received from the district.

c. If the requirements of the preceding subdivision (3)b, if applicable, are met.

If the clerk shall determine that all of the three preceding requirements are met, he shall direct that the area(s) of land to be included within the boundaries of the district, in accordance with the provisions of the report of the board of viewers, as approved.

(14) If the clerk shall determine either:

a. That no part of the area proposed to be included is or will be benefited by the canals, structures or other improvements of the district and equitably should not be included within the boundaries of the district; or

b. That the requirements of the preceding subdivision (3)a or b, whichever is applicable, have not been complied with; he shall dismiss the proceeding.

(15) Any landowner, party petitioner or the drainage district may, within 10 days after the ruling or adjudication by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. Such appeal shall be taken and prosecuted as provided in

special proceedings. Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. All of the terms and provisions of G.S. 156-75 shall apply to the appeal.

(16) The duties and powers of the board of commissioners as to those lands included within the district by the current proceedings shall be the same as to those in the original proceeding. (1961, c. 614, s. 1; 1965, c. 1143, s. 4; 1969, c. 192, s. 3; cc. 440, 1002.)

§ 156-93.4. Coordination of proceedings under §§ 156-93.2 and 156-93.3. —In the event a proceeding shall be instituted as provided for in G.S. 156-93.2 and shall also include the extension of boundaries, as provided for in G.S. 156-93.3, the provisions of G.S. 156-93.2 and 156-93.3 shall be coordinated and if there shall be any conflict as to procedure, that provided for in G.S. 156-93.3 shall be followed. (1961, c. 614, s. 1.)

§ 156-93.5. Assessments and bonds for improvement, renovation, enlargement and extension. — The board of drainage commissioners shall, for the purposes set forth in this Article, levy the necessary assessments and may issue bonds or other debentures for the purpose of providing funds for the construction or acquisition of any of the improvements or works authorized by this Article. The time and manner of levying assessments and the issuance of bonds or other debentures and the terms thereof shall be the same as provided for in Article 8 of Subchapter III. (1961, c. 614, s. 1.)

§ 156-93.6. Rights-of-way and easements for existing districts. — All drainage districts heretofore created shall be deemed to own an easement or right-of-way in and to those lands upon which there are existing canals and spoil banks.

Whenever the proposed repairs, maintenance or other improvements make it necessary for the drainage district to acquire additional land for easements or right-of-way, the procedure to secure the same shall be in accordance with G.S. 156-70.1. (1961, c. 614, s. 1.)

Applied in Taylor v. Askew, 17 N.C. App. 620, 195 S.E.2d 316 (1973).

§ 156-93.7. Existing districts may act together to extend boundaries within watershed. — If there shall be more than one drainage district in a drainage basin, or watershed, the board of drainage commissioners of any of the districts may initiate or join separately or collectively with the commissioners of one or more of other drainage districts, in the drainage basin or watershed, and/or with the owners of land within the drainage basin, whose lands are not included within an existing drainage district in a petition to the court, asking for the creation of a larger drainage district, or the extension of boundaries of one of the existing districts.

The joinder in the petition by the commissioners of an existing drainage district, acting in the name of the district, shall have the effect of including all of the land assessed within the drainage district, in the petition asking for the creation of the larger drainage district or the extension of boundaries of an existing district. The total area of assessed land, within the existing drainage district shall be included, as land in the petition, in determining whether or not the requirement of G.S. 156-93.3 (3) b have been fulfilled.

The provisions of this section shall apply in proceedings provided for in G.S. 156-93.2 and 156-93.3. (1961, c. 614, s. 1; 1965, c. 1143, s. 5.)

ARTICLE 8.

Assessments and Bond Issue.

§ 156-94. Total cost for three years ascertained. — After the classification of lands and the ratio of assessments of the different classes to be made thereon has been confirmed by the court, the board of drainage commissioners shall ascertain the total cost of the improvement, including damages awarded to be paid to owners of land, all costs and incidental expenses, and also including an amount sufficient to pay the necessary expenses of maintaining the improvement for a period of three years after the completion of the work of construction, not exceeding ten per centum (10%) of the estimated actual cost of constructing the drainage works or the contract price thereof if such contract has not been awarded, and after deducting therefrom any special assessments made against any railroad or highway, and, thereupon, the board of drainage commissioners, under the hand of the chairman and secretary of the board, shall certify to the clerk of the superior court the total cost, ascertained as aforesaid; and the certificate shall be forthwith recorded in the drainage record and open to inspection of any landowner in the district. (1909, c. 442, s. 31; 1911, c. 67, s. 8; C. S., s. 5351; 1923, c. 217, s. 4.)

Cross Reference. — See § 156-104 as to application of this section.

§ 156-95. Assessment and payment; notice of bond issue. — If the total cost of the improvement is less than an average of twenty-five cents (25¢) per acre on all the land in the district, the board of drainage commissioners shall forthwith assess the lands in the district therefor, in accordance with their classification, and said assessment shall be collected in one installment, by the same officer and in the same manner as State and county taxes are collected, and payable at the same time. In case the total cost exceeds an average of twenty-five cents (25¢) per acre on all lands in the district, the board of drainage commissioners shall give notice for three weeks by publication in some newspaper published in a county in which the district, or some part thereof, is situated, if there be any such newspaper, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places in the district, reciting that they propose to issue bonds for the payment of the total cost of the improvement, giving the amount of bonds to be issued, the rate of interest that they are to bear, and the time when payable. Any landowner in the district not wanting to pay interest on the bonds may, within 15 days after the publication of such notice, pay to the county treasurer the full amount for which his land is liable, to be ascertained from the classification sheet and the certificate of the board showing the total cost of the improvement, and have his lands released from liability to be assessed for the improvement; but such land shall continue liable for any future assessment for maintenance or for any increased assessment authorized under the law. (1909, c. 442, s. 32; 1911, c. 67, s. 9; C. S., s. 5352.)

Assessments Not "Taxes". — Assessments made for the maintenance of a drainage district, incorporated under the provisions of the statute, are not "taxes," though they may be so incorrectly denominated therein; they are only assessments made for the special benefits to the land within the district and not imposed for the purpose of general revenue. Drainage Comm'rs v. Davis, 182 N.C. 140, 108 S.E. 506 (1921).

Assessments Are Liens in Rem. — Assessments upon lands in a drainage district are liens in rem, resting upon the lands, into whosesoever hands it may be at the time they accrue, and do not come within the terms of a warranty against encumbrances by deed. Taylor v. Commissioners of Moseley Creek Drainage Dist., 176 N.C. 217, 96 S.E. 1027 (1918).

Timber Interest Not Liable. — A conveyance of the timber, under the usual deed, providing for its cutting and removal from the land within a stated period, is regarded as a severance thereof from the land, and the grantee in the deed is not liable for an assessment for drainage purposes laid thereon. Dover Lumber Co. v. Board of Comm'rs, 173 N.C. 117, 91 S.E. 714 (1917).

One Owner Not Liable for Failure of Others. — No owner is responsible for other owners by reason of their failure to pay, except through the method of assessment provided by the statute. Carter v. Board of Drainage Comm'rs, 156 N.C. 183, 72 S.E. 380 (1911).

Owner Liable for Additional Assessments. —The land of the owner who has paid his assessments, as provided by this section, is subject to additional assessments, the lands in the district being liable until the original bond issue for making the improvements or indebtedness incurred therefor is paid in full. Virginia-Carolina Joint Stock Land Bank v. Watt, 207 N.C. 577, 178 S.E. 228 (1935).

Courts Can Enjoin Collection of Assessments. — The courts, in proper instances, have the power to interfere and stay amounts assessed against the owner of lands within an established drainage district, when it appears that the commissioners, in carrying out the ministerial duties imposed on them, endeavor to collect from him a sum in excess of their own assessment, or that they had made out these rolls in utter disregard to the classifications and ratio of assessments established by the final report, or they had made such changes in the plans and specifications thereof as to exceed their powers and work substantial wrong and hardship upon a landowner, if he is not guilty of laches and has not unduly delayed asserting his rights. Griffin v. Board of Comm'rs, 169 N.C. 642, 86 S.E. 575 (1915).

But where a drainage district has been fully and lawfully established in accordance with the statute, and the commissioners duly appointed and bonds issued in furtherance of the scheme, an injunction restraining the collection of the assessment against the landowners therein, at the suit of one of them, will not issue, as against the interest of the holder of the bonds, unless it clearly appears that the commissioners have substantially departed, to the injury of the claimant, from the scheme set forth in the final report of the viewers, etc., and it appearing in this case that such has not been done, the restraining order is properly dissolved, and the further order that the plaintiff may proceed in his action against the commissioners is approved. Griffin v. Board of Comm'rs, 169 N.C. 642, 86 S.E. 575 (1915).

Purchaser Takes with Notice of Assessments. — The purchaser of lands within a drainage district formed under the provisions of this Chapter is fixed by the statute with notice of the assessments and the time thereof, whether a resident of another state or not. Pate v. Banks, 178 N.C. 139, 100 S.E. 251 (1919).

Presumption as to Notice. — The presumption is in favor of the regularity of the official proceedings of the commissioners of a drainage district, and applies as to the sufficiency of notice to a landowner within the district of a meeting duly had to assess such owners according to benefits received from the improvements therein. Mitchem v. Gaston County Drainage Comm'n, 182 N.C. 511, 109 S.E. 551 (1921).

Waiver of Notice. — Where the owner of land in a drainage district, formed under the provisions of the statute, appears at a meeting of the commissioners held for the purpose, and is silent, making no objection or exception to the assessment imposed upon his land, the question as to whether he had been sufficiently served with notice of the meeting becomes immaterial, his appearance being construed as a waiver thereof, or rather as dispensing with formal notice. And he cannot collaterally, by injunction, restrain the collection of these assessments by sheriff's sale; and this applies to his grantee who knew that the lands were situate within the district and subject to the assessments. Mitchem v. Gaston County Drainage Comm'n, 182 N.C. 511, 109 S.E. 551 (1921).

Cited in Board of Drainage Comm'rs v. Jarvis, 211 N.C. 690, 191 S.E. 514 (1937).

§ 156-96. Failure to pay deemed consent to bond issue. — Every person owning land in the district who shall fail to pay to the treasurer the full amount for which his land is liable, as aforesaid, within the time above specified, shall be deemed as consenting to the issuance of drainage bonds, and in consideration of the right to pay his proportion in installments, he hereby waives his rights of defense to the payment of any assessments which may be levied for the payment of bonds, because of any irregularity, illegality, or defect in the proceedings prior to this time, except in case of an appeal, as hereinbefore provided, which is not affected by this waiver. The term "person" as used in this Subchapter includes any firm, company, or corporation. (1909, c. 442, s. 33; 1911, c. 67, s. 10; C. S., s. 5353; 1963, c. 767, s. 4.)

Cited in Board of Drainage Comm'rs v. Jarvis, 211 N.C. 690, 191 S.E. 514 (1937).

§ 156-97. Bonds issued. — At the expiration of 15 days after publication of notice of bond issue the board of drainage commissioners may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amounts as shall have been paid in in cash to the treasurer. Bonds issued by the board of drainage commissioners shall comply with the following provisions:

(1) The bonds shall be serial bonds;

(2) The denomination of the bonds shall be not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000);

(3) The interest upon said bonds shall not be more than eight percent (8%) per annum, from the date of issue and payable semiannually;

(4) The first annual installment of principal shall fall due not less than three years nor more than six years after the date of the bonds;

(5) Each annual installment of principal shall be not less than two percent (2%) nor more than ten percent (10%) of the total bonds authorized;

(6) If the total amount of bonds to be issued does not exceed ten percent (10%) of the total amount of the assessment, the board of commissioners may, in their discretion, not issue any bonds and in lieu thereof issue assessment anticipation bonds which shall mature over a period of not less than four nor more than 10 years and shall be payable in equal annual installments. The interest rate on said assessment anticipation bonds shall not be more than eight per centum (8%) per annum;

(7) The board of commissioners may issue bond anticipation note or notes to be redeemed and paid upon the sale and delivery of bonds herein provided for. If such bond anticipation note or notes are issued, at the discretion of the commissioners, such may be done after the bonds have been sold and prior to the printing and delivery of said bonds and must be paid from the proceeds of said bonds when delivered. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 12; C. S., s. 5354; 1923, c. 217, s. 5; 1955, c. 1340; 1957, c. 1410, s. 1; 1961, c. 601, s. 1; 1963, c. 767, s. 4; 1969, c. 878.)

Cross Reference. — See § 156-104 as to application of this section.

Effect of Interest of Clerk Appointing Commissioners. — An issue of bonds by a drainage commission is not void by reason that the clerk of the court who appointed the commissioners owned an interest in a tract of land within the drainage district, as such an interest is too minute, and not directly the subject matter of the litigation. White v. Lane, 153 N.C. 14, 68 S.E. 895 (1910).

Cited in Board of Comm'rs v. Gaines, 221 N.C. 324, 20 S.E.2d 377 (1942); In re Albemarle Drainage Dist., Beaufort County No. 5, 255 N.C. 338, 121 S.E.2d 599 (1961).

§ 156-97.1. Issuance of assessment anticipation notes. — In lieu of the bonds provided for in G.S. 156-97, the board of drainage commissioners may issue assessment anticipation notes of the district for an amount not to exceed the assessment levied by the commissioners and approved by the clerk of the superior court, less such amounts as shall have been paid in in cash to the treasurer. It shall be optional with the board of drainage commissioners in issuing assessment anticipation notes to issue serial notes in any denominations bearing not more than six percent (6%) interest from the date of issue, payable semiannually. The first annual installment of principal shall be due not less than one year nor more than two years after date thereof, and each annual installment of principal shall not be less than two percent (2%) nor more than twenty-five percent (25%) of the total amount of notes authorized and issued.

Such assessment anticipation notes, when issued, shall have the same force and effect of bonds issued under the provisions of this Article and shall be collectible in the same manner.

The commissioners may issue either serial notes or an amortized note. (1957, c. 912, s. 2; 1961, c. 601, s. 3; 1963, c. 767, ss. 4, 7.)

§ 156-98. Form of bonds and notes; excess assessment. — All bonds and notes authorized and issued shall be signed by the chairman and secretary of the board of drainage commissioners and the corporate seal of the district affixed thereto, and the interest coupons shall be authenticated by the facsimile signature of the secretary, and both the principal and interest coupons shall be payable at some bank or trust company to be designated by the board of drainage commissioners and incorporated in the body of the bond. The form of the bond shall be authorized by the board of drainage commissioners or by the board and the purchaser of the bonds jointly, at the option of the board.

All bonds of reclamation districts shall have that fact noted upon the face of the bond, either by stamping or printing the same thereon. All bonds of improvement districts shall also have that fact noted upon their face.

For the purpose of meeting any possible deficit in the collection of annual drainage assessments or any deficit arising out of unforeseen contingencies there shall be levied, assessed and collected during each year when either the interest or principal or both interest and principal on the outstanding bonds shall be due, an assessment as will yield ten percent (10%) more than the total of interest and principal due in such years; that is to say, for every one hundred dollars ($100.00) of principal and interest, or either, due in any one year, there shall be levied, assessed and collected a sufficient drainage assessment to yield one hundred and ten dollars ($110.00) for such year. When this excess of drainage tax so levied, assessed and collected shall accumulate so that the aggregate surplus in the hands of the treasurer of the district shall amount to more than fifteen percent (15%) of the total principal of the bonds of the district outstanding and unpaid, then such surplus above fifteen percent (15%) thereof may be available for expenditure by the board of drainage commissioners in the maintenance and upkeep of the drainage work in such district in the manner provided by law: After all the drainage assessments have been collected except the last assessment, if the surplus which has accumulated amounts to more than five percent (5%) of the total issue of bonds of the district, then and in such event the board of drainage commissioners may in their discretion apply such excess above five percent (5%) toward the reduction of the total amount embraced in the last assessment, reducing the same pro rata as to each tract of land embraced in the district, and having regard to the classification, to the end that such reduction shall be fairly and justly made. As to such surplus as shall accumulate in the hands of the treasurer of the district over and above all obligations of the district which may be due, the treasurer is hereby directed to deposit same in some solvent bank or banks at the highest rate of interest obtainable therefor, and the said treasurer shall be authorized, if he deems it necessary, to demand satisfactory security for such deposits; but the said treasurer shall reserve the right to demand a repayment at any time upon giving not exceeding 30 days' notice thereof. Whereas the proceeds of the first drainage assessment may not be collected and in the hands of the treasurer of the district prior to the maturity of the first and second semiannual installments of interest upon the issue of bonds, the treasurer of the district is hereby directed to pay the interest coupons first maturing and also the interest coupons next maturing, if necessary, out of funds in his hands for the purpose of maintaining the improvement for the period of three years after the completion of the work or construction. As a surplus fund with the treasurer arising out of the annual additional assessment of ten per centum (10%) shall accumulate in any one year in excess of fifteen per centum (15%) of the total principal of the bonds of the district outstanding and unpaid, as herein provided, the treasurer shall transfer in each of such years such surplus fund to the fund for maintaining the improvement after completion, as a reimbursement of the fund formerly withdrawn therefrom for the payment of the first and second installments of interest coupons until such reimbursement shall be fully made. The treasurer shall thereafter keep separate accounts of the proceeds of such additional ten percent (10%) assessment remaining each year after the payment of all maturing obligations, and also a separate account of the funds provided for maintaining the improvement for the period of three years after completion of improvement and all payments therefrom and reimbursements thereto. (1917, c. 152, s. 13; C. S., s. 5355; 1923, c. 217, s. 6; 1927, c. 98, s. 5; 1961, c. 601, s. 2.)

Cross Reference. — See § 156-104 as to application of this section.

Quoted in In re Perquimans County Drainage Dist. No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961).

Cited in Robeson County Drainage Dist. No. 4 v. Bullard, 229 N.C. 633, 50 S.E.2d 742 (1948).

§ 156-99. Application of funds; holder's remedy.—The commissioners of the district may sell the bonds or notes of the district for not less than par and devote the proceeds to the payment of the work as it progresses and to the payment of the other expenses of the district provided for in this Subchapter. The proceeds from the sale of the said bonds or notes shall be for the exclusive use of the levee or drainage district specified therein. A copy of said bonds or notes shall be recorded in the drainage record. If serial bonds or notes are issued it shall only be necessary to record the first numbered bond or note, with a statement showing the serial numbers, the amount and the due dates of principal and interest.

There shall be set out specifically in the drainage record of said proceeding, a description of the lands embraced in the district for which the tax or assessment has not been paid in full, and which is subject to the lien of the said obligations. A reference to the tract number on the map of the district as recorded in the drainage proceedings or in the office of the register of deeds is sufficient description.

If any installment of principal or interest represented by the bonds and notes shall not be paid at the time and in the manner when the same shall become due and payable, and such default shall continue for a period of six months, the holders of such bonds or notes upon which default has been made may have a right of action against the drainage district or the board of drainage commissioners of the district, its officers, including the tax collector and treasurer, directing the levying of a tax or special assessment as herein provided, and the collection of same, in such sum as may be necessary to meet any unpaid installments of principal and interest and costs of action; and such other remedies are hereby vested in the holders of such bonds or notes in default, as may be authorized by law and the right of action is hereby vested in the holders of such bonds or notes upon which default has been made, authorizing them to institute suit against any officer on his official bond for failure to perform any duty imposed by the provisions of this Subchapter.

The official bond for the tax collector and treasurer shall be liable for the faithful performance of the duties herein assigned them. Such bond may be increased by the board of county commissioners. (1909, c. 442, s. 34; 1911, c. 67, s. 11; c. 205; C. S., s. 5356; 1923, c. 217, s. 7; 1963, c. 767, s. 8.)

Local Modification. — Brunswick, Columbus: 1929, c. 299.

Cross Reference. — See § 156-104 as to application of this section.

Action against Landowner Is Unauthorized. — The remedy provided by statute to the holders of drainage bonds to enforce payment of their obligations is by action against the drainage district and its commissioners and the tax collector and treasurer to compel these officers to perform their legal duties in pursuing the statutory procedure for the collection and application of drainage assessments, which remedy is adequate and exclusive, and the holder of past-due bonds may not maintain an action against the owner of land within the district to enforce the lien of delinquent drainage assessments against the land. Wilkinson v. Boomer, 217 N.C. 217, 7 S.E.2d 491 (1940).

Effect of Foreclosure of Tax Liens. — Where, in an action to foreclose a tax lien, service of process on "bondholders, lien holders or other persons having or claiming some interest in the land" was had by publication, but the publication made no reference to any drainage district, drainage assessment, liens or bonds or bondholders of any drainage district, the publication was held insufficient to give the court jurisdiction of the holders of bonds of the drainage district in which the lands or any part of them lay, and the judgment therein could not preclude the bondholders from exercising their remedy under prescribed conditions to have the drainage district levy additional assessments against the lands for the purpose of paying the drainage bonds. Board of Comm'rs v. Gaines, 221 N.C. 324, 20 S.E.2d 377 (1942).

§ 156-100. Sale of bonds. — In making the sale of drainage bonds the board of drainage commissioners shall prepare a notice of such sale containing the usual and appropriate information regarding the terms and provisions of the bonds, and shall publish the same for at least a period of two weeks in at least one paper of general circulation published within the State and in at least one other newspaper of large circulation among the buyers of bonds, in which they shall invite sealed bids from prospective purchasers to be opened on a certain day, and may require a cash deposit to accompany all bids, and shall reserve the right to reject any and all bids. In such notice the commissioners may hold in reserve information as to the date when the first installment of principal shall fall due, the annual installments of principal to be paid, the number of years within which the serial bonds are to be paid, the form of the bonds, and the name of the bank or trust company at which the interest coupons and the installments of principal are to be made payable, and shall state that the information and data so withheld may subsequently be agreed upon between the drainage commissioners and the purchaser of the bonds; or the board of drainage commissioners in their advertisement asking bids may make optional propositions in the respects above recited, inviting bids as to each kind of bond so proposed. The board of drainage commissioners shall accept the highest bona fide bid for such bonds and issue and sell the same accordingly, provided the highest bid shall equal or exceed the par value of the bonds with any accrued interest thereon. If no satisfactory bid shall be received, the board of drainage commissioners may readvertise the bonds for sale in the manner above provided, or they may accept any private bid for the bonds at not less than their par value, with any accrued interest thereon. The board of drainage commissioners shall in good faith make diligent effort to sell the bonds at a price not less than their par value, with accrued interest. Bonds of any drainage district heretofore sold or contracted to be sold by the Local Government Commission in the manner provided by the Local Government Act, either alone or in conjunction with the board of drainage commissioners, shall be deemed to have been lawfully sold or contracted to be sold. (1909, c. 442, s. 34; 1911, c. 67, s. 11; 1917, c. 152, s. 15; C. S., s. 5357; 1941, c. 142.)

§ 156-100.1. Sale of assessment anticipation notes. — Should assessment anticipation notes be issued by a drainage district under the provisions of G.S. 156-97.1, the board of drainage commissioners may accept any private bid for said assessment anticipation notes at not less than their par value, with accrued interest thereon without the necessity of advertising the sale hereof as is provided for in the sale of bonds under the provisions of G.S. 156-100. (1957, c. 912, s. 3.)

§ 156-100.2. Payment of assessments which become liens after original bond issue. — Payment of assessments not included in the original bond or note issue shall be financed in the following manner:

(1) In the event of appeal from the order of the clerk of superior court approving the final report of the board of viewers, the assessment approved by the appellate court shall be due and payable 30 days from the entry of the final order in said appeal.

(2) In the event land should be included within the district for any other reason, the assessment thereon shall be due and payable 30 days after the date of the agreement or court order by which said land is included.

(3) In the event the assessments referred to in the preceding subdivisions (1) and (2) are not paid at the expiration of the said 30-day period, then the commissioners may provide for installment payments of said assessment upon such terms as may be approved by the clerk of the superior court who has jurisdiction of the said drainage proceeding.

The commissioners of the district may issue bonds or notes for an amount equal to the total of the installment payments, upon terms as approved by the clerk of the superior court. The lien of the assessment, the rights of the bond or note holder, and all other liabilities and rights shall be the same as prescribed in this Subchapter III for other bonds and notes of the district. (1963, c. 767, s. 9.)

§ 156-100.3. Sinking fund. — The commissioners of the drainage district may establish a sinking fund to be used to pay bonds and notes issued by the district. The terms and conditions by which the said sinking fund is established shall be approved by the clerk of the superior court who has jurisdiction of said district. (1963, c. 767, s. 10.)

§ 156-101. Refunding bonds issued. — In any case where the board of drainage commissioners of any drainage district have issued or may issue bonds for the purpose of constructing or completing the drainage works in such district, the payment of which at maturity would in the judgment of the board of drainage commissioners be an unreasonable burden on the owners of the lands in such district assessed for the payment of such bonds and interest, or if it shall appear for other good and substantial reasons that the welfare of the district and the owners of lands therein would be promoted thereby, the board of drainage commissioners shall have the power to refund such bonds, or any part thereof, and issue new bonds equal to the amount of bonds outstanding and unpaid, or any part thereof. The new or refunding bonds shall bear a rate of interest not exceeding six percent (6%) payable semiannually, and shall be divided into such annual installments not exceeding ten percent (10%) and not less than five percent (5%) of the outstanding bonds so refunded. The new assessments shall be levied and collected with which to pay the principal and interest on the bonds in the manner provided by law. The first installment of principal on the bonds so refunded may be made payable at a certain date in the future not exceeding six years from the date of the refunding bonds, and in the meantime annual assessments shall be levied and collected for the payment of the interest. (1917, c. 152, s. 14; C. S., s. 5358.)

§ 156-102. Drainage bonds received as deposits. — The State Treasurer is authorized to receive drainage bonds issued by drainage districts in North Carolina as deposits from banks, insurance companies, and other corporations required by law to make deposits with the State Treasurer: Provided, that the Attorney General shall have approved the form of such bonds. (1917, c. 152, s. 7; C. S., s. 5359.)

Local Modification. — Edgecombe, Pitt: 1937, c. 334.

§ 156-103. Assessment rolls prepared. — The board of drainage commissioners shall immediately prepare the assessment rolls or drainage tax lists, giving thereon the names of the owners of land in the district and a brief description of the several tracts of land assessed and the amount of assessment against each tract of land. The first of these assessment rolls shall be due and payable on the first Monday in September following the date of such bonds, and shall provide funds sufficient for the payment of interest on such bonds for one year. The second assessment roll shall make like provision for the payment of the interest for one year. Annual assessment rolls shall thereafter provide funds sufficient to meet the interest for one year on the issue of bonds outstanding. During the year previous to maturity of any annual installment due upon the principal of said bonds there shall be an assessment roll sufficient to provide funds for the payment of both the interest for one year and for the payment of the annual installment due upon the principal of the bonds. Such annual assessments shall be made from year to year to provide funds to meet the interest for one year and the annual installment of the principal due upon the bonds outstanding, until the whole principal due upon the outstanding bonds and the interest thereon shall be fully paid. In making up such assessment rolls there shall be included ten percent (10%) additional as provided in G.S. 156-98. Each of the assessment rolls shall specify the time when collectible and be numbered in their order, and the amounts assessed against the several tracts of land shall be in accordance with the benefits received, as shown by the classification and ratio of assessments made by the viewers. These assessment rolls shall be signed by the chairman of the board of drainage commissioners and by the secretary of the board. There shall be four copies of each of the assessment rolls, one of which shall be filed with the drainage record, one shall be filed with the chairman of the board of drainage commissioners, who shall carefully preserve the same, one shall be preserved by the clerk of the court, without change or mutilation, for the purposes of reference or comparison, and one shall be delivered to the sheriff, or other county tax collector, after the clerk of the superior court has appended thereto an order directing the collection of such assessments, and the assessments, shall thereupon have the force and effect of a judgment as in the case of State and county taxes. If the drainage commission which has assessed the lands of a drainage district prior to March 11, 1919, shall file the aforesaid four copies of assessment rolls within six months from April 1, 1919, the filing of such assessment rolls shall have the same legal effect as if filed strictly in accordance with this section immediately after the preparation of such assessment rolls. The State having authorized the creation of drainage districts and having delegated thereto the power to levy a valid tax in furtherance of the public purposes therof, it is hereby declared that drainage districts heretofore or hereafter organized under existing law or any subsequent amendments thereto are created for a public use and are political subdivisions of the State. (1911, c. 67, s. 12; 1917, c. 152, s. 9; 1919, c. 282, s. 1; C. S., s. 5360; 1921, c. 7; 1923, c. 217, s. 8.)

Cross Reference.— See § 156-104 as to application of this section.

Completion of Rolls. — The assessment arises upon the completion of the assessment rolls. Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

Cited in Board of Comm'rs v. Gaines, 221 N.C. 324, 20 S.E.2d 377 (1942); Robeson County Drainage Dist. No. 4 v. Bullard, 229 N.C. 633, 50 S.E.2d 742 (1948).

§ 156-104. Application of amendatory provisions of certain sections; amendment or reformation of proceedings. — All the provisions of Chapter 217 of the Public Laws of 1923 amendatory of G.S. 156-71, 156-75, 156-83, 156-94, 156-97, 156-98, 156-99 and 156-103 shall apply to all drainage districts which shall hereafter be organized, and also to all districts where proceedings for the organization thereof have been instituted and are now pending and where the bonds have not been actually issued, sold, and delivered to the purchaser thereof. If it shall be necessary to amend or reform any of the pleadings or orders made by the court or any action taken by the board of drainage commissioners in any drainage proceedings instituted and pending before March 6, 1923, full authority is granted to make any such amendments, to the end that the said drainage proceedings shall conform with the provisions hereof. (1923, c. 217, s. 9; C. S., s. 5360(a).)

Local Modification. — Hyde: 1923, c. 217, s. 10; C. S., s. 5360(a).

§ 156-105. Assessment lien; collection; sale of land. — The assessments shall constitute a first and paramount lien, second only to State and county taxes, upon the lands assessed for the payment of the bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as the State and county taxes are collected. The assessments shall be due and payable on the first Monday in September each year, and if the same shall not be paid in full by the thirty-first day of December following, it shall be the duty of the sheriff or tax collector to sell the lands so delinquent. The sale of lands for failure to pay such assessments shall be made at the courthouse door of the county in which the lands are situated, between the hours of 10 o'clock in the forenoon and four o'clock in the afternoon of any date except Sunday or another legal holiday, which may be designated by the board of drainage commissioners. After any such sale date has been designated by the board of drainage commissioners, if for any necessary cause the sale cannot be made on that date, the sale may be continued from day to day for not exceeding four days, or the lands may be readvertised and sold on any day which the board of drainage commissioners may or shall designate during the same hours and without any order being obtained therefor during the same calendar year. Nothing in this section shall be construed to require any order from any court for any sale or resale held hereunder. The existing general tax law in force when sales are made for delinquent assessments shall have application in redeeming lands so sold; and in all other respects, except as herein or otherwise modified or amended, the existing law as to the collection of State and county taxes shall apply to the collection of such drainage assessments. No bid at any sale shall be received unless sufficient in amount to discharge all the drainage assessments and other charges due by the delinquent lands or owner thereof, together with all costs and expenses of sale. If no sufficient bid be received, the board of drainage commissioners of the district shall be deemed the purchaser in its corporate capacity at a sum sufficient to pay all assessments which are due and costs as above stated, and shall be entitled to receive a certificate of purchase and deed in the manner provided by law for purchasers at tax sales. The board of drainage commissioners shall only be required to pay to the sheriff the costs and expenses of sale before receiving a certificate of purchase. The board of drainage commissioners of the district in their corporate capacity shall be in like position and have the same rights and be subject to the same duties as the purchaser of lands at any tax sale under the general law. If the board of drainage commissioners shall have been the purchaser of lands so sold, the amount paid in redemption by the owner, or any person having an estate therein or lien thereon, shall include the sum bid therefor plus the penalty. The board of drainage commissioners shall pay to the sheriff or tax collector the amount representing their bid at the sale of said lands before they shall be entitled to receive a deed therefor, which the sheriff shall pay to the treasurer of the drainage district in the same manner as other funds received by him. The board of drainage commissioners, after acquiring a deed for said lands, may hold the same as an asset of the district, and shall be liable for the payment of all drainage assessments and State and county taxes accruing after the sale at which the district was a bidder, and in all respects be deemed the owner of said lands and subject to the same privileges and liabilities as any other landowner, including the right to convey the said lands for a consideration and pay the proceeds of said sale to the treasurer of the district, which may be distributed by the drainage commissioners for the benefit of the district in the same manner as other district funds.

If any sheriff or tax collector failed for any reason to collect drainage assessments upon lands in any drainage districts due in 1917, or any subsequent years, and further failed to make valid sales of the lands so delinquent in the payment of such assessments, then and in such event the existing sheriff or tax collector is hereby authorized and directed to proceed to collect such unpaid drainage assessments, with interest thereon from the dates when such assessments respectively became due, and in default of payment being made he is further authorized to make sales of such lands as may be in default at any time hereafter, at the times and in the manner authorized by law as amended herein; and the purchaser at said sales shall acquire title to such lands in the manner provided by law. If the sheriff or tax collector in office at the time such assessments were in default has since died or gone out of office, the powers herein given shall be exercised by the existing sheriff or tax collector.

The 1931 amendment to this section shall have the same force and effect from and after April 13, 1931, as if it had been ratified and enacted prior to the first day of January, 1929, and no sale of drainage lands held under the provisions of section 5361 shall be deemed or declared void by reason of the fact that they may not have been held on the day specified in section 5361 of the Consolidated Statutes prior to this amendment. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C. S., s. 5361; Pub. Loc. 1923, c. 88, ss. 3, 4, 5; 1931, c. 273.)

Local Modification. — Franklin, Hyde, Nash, Wilson: Pub. Loc. 1923, c. 88.

The assessments upon lands in a drainage district are a lien in rem on the lands of the owner for the payment of the bonds issued by the district in accordance with the statute, the district being a geographical quasi-public corporation, and the benefits annually accruing to the advantage of successive owners, such assessments are due and payable at stated intervals. Pate v. Banks, 178 N.C. 139, 100 S.E. 251 (1919).

The legislature intended that the assessments as shown on the assessment rolls which the board of drainage commissioners is required to prepare immediately upon the sale of the bonds, become liens as they become due, affecting all of the lands on the assessment rolls, which relate to the entire district for the entire period over which the payment of the assessments is spread. Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

Not Debt of Owner; Encumbrance. — The lien of the charges for drainage is not a debt of the owner of the land therein, but is a charge solely upon the land and accrues, pari passu, with the benefits as they shall accrue thereafter. They are not liens until they successfully fall due, and are presumed to be paid out of the increased productiveness and other benefits as they accrue from time to time. These assessments are to be levied from time to time to pay, not the indebtedness of the owner of any tract, but to pay the bonded indebtedness of the district, in that they are exactly like bonds issued by the township, county or State for public benefits and which become liens on property in futuro only to the extent of the taxes falling due each year to pay the interest, and such part of the principal as may become due. One who purchases land in a township, county or State cannot complain that these successive tax liens will, from time to time, be collectible out of his realty. Whether he knew of the existence of such indebtedness or not makes no difference. They are not encumbrances within the sense of the warranty clause of a deed. The assessments in a drainage district to take the water off the land is simply an annual tax for that purpose. Pate v. Banks, 178 N.C. 139, 100 S.E. 251 (1919).

Liens on lands within a statutory drainage district for assessment charges for its maintenance and upkeep do not fall within a warranty or covenant against encumbrances contained in a deed until they are due and payable. Branch v. Saunders, 195 N.C. 176, 141 S.E. 583 (1928).

Remedy for Collection Is Adequate. — It is provided by this section that drainage assessments shall be collected in the same manner as taxes are collected, and such liens may be collected by sale of the land by the sheriff, with issue of certificates of sale, with right in the holder of the certificates to foreclose in due time; or by foreclosure of the lien in a suit instituted by the district or the holder of a tax deed or certificate, in the nature of an action to foreclose a mortgage, and this remedy for the collection of such assessments is adequate, and assessments collected are public funds although they are to be used solely for the purpose of paying principal and interest on drainage bonds. Wilkinson v. Boomer, 217 N.C. 217, 7 S.E.2d 491 (1940).

Provision Implementing Collection. — See §156-109 and note.

A receiver cannot intervene, in a bank's action against the board, on the ground that he has the right, under this section to collect payments. See Board of Drainage Comm'rs v. Lafayette Southside Bank, 27 F.2d 286 (4th Cir. 1928).

Money from Assessments Is Like Public Money of County. — This and the following sections impress the moneys derived from the assessments as public money of the county, to be kept in the depository designated under the statute for such funds, although the funds in question are devoted to a particular or defined use. Commissioners of Robeson County v. Lewis, 174 N.C. 528, 94 S.E. 8 (1917).

Due Process of Law Not Denied. — The statute under which a drainage district is formed does not deny the district due process of law by providing for the collection and security of the assessments as other county taxes are collected, kept, etc. Commissioners of Robeson County v. Lewis, 174 N.C. 528, 94 S.E. 8 (1917).

Assessments Have Priority over Mortgages. — The assessments on lands for a bond issue have a prior lien to a mortgage executed thereon prior to the formation of said district. Drainage Comm'rs of Washington County Dist. No. 4 v. Eastern Home & Farm Ass'n, 165 N.C. 697, 81 S.E. 947 (1914).

§ 156-106. Assessment not collectible out of other property of delinquent. —Only the land assessed in the drainage proceeding shall be liable for the drainage tax or assessment, and no other property of the landowner shall or may be sold for said drainage tax or assessment: Provided, that this section shall not apply to any drainage bond sold and delivered prior to March 7, 1927, or to any litigation pending at that time. (1919, c. 282, s. 2; C. S., s. 5362; 1927, c. 139.)

Local Modification. — Cumberland, Robeson: 1927, c. 139, s. $1^1/_2$.

§ 156-107. Sheriff in good faith selling property for assessment not liable for irregularity. — The sheriff who executes upon property for the collection of drainage assessments under the provisions of this Article shall not be liable either civilly or criminally if he shall sell such property in good faith, even though such sale is irregular or for any cause illegal. (1919, c. 282, s. 4; C. S., s. 5363.)

§ 156-108. Receipt books prepared. — The clerk of the superior court in each county where one or more drainage districts have been established shall be required to have prepared annually during the month of August a form of receipt, with appropriate stubs attached and properly bound, for the drainage assessments due on each tract of land as recited in the assessment rolls. This bound book of tax receipts or bills shall be indorsed "Drainage assessments of the (here give the name of the district) for the county of . . . . ., delivered to the sheriff or tax collector as of the first Monday in September, 19. . . . ., for collection as required by law," and the same indorsement shall be printed at the top of each tax bill or blank receipt. Each tax bill or blank receipt shall contain a blank space for the name of the owner of the property, the amount of the annual drainage tax, the amount of maintenance tax, if any, and a receipt at the bottom of the same, followed by a blank line for the signature of the tax collector. This bound book of tax bills or receipts, with the blanks duly filled in, shall be delivered to the sheriff or tax collector on the first Monday of September of each year. The necessary cost of printing and binding such book of tax bills or receipts and the filling in of the same shall be a proper charge against such drainage district and shall be paid by the board of drainage commissioners. (1917, c. 152, s. 9; 1919, c. 208, s. 2; C. S., s. 5364.)

Stated in Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

§ 156-109. Receipt books where lands in two or more counties. — Where any drainage district which has been established contains lands located in a county or counties other than the county in which the district was established, the clerk of the superior court of the county in which the district was established shall have prepared annually during the month of August a form of tax bills or receipts, with appropriate stubs attached, covering all the lands in the drainage district located in such other county or counties, and in the form herein provided for the county in which the district has been established, and have the same substantially bound in book form. He shall also fill in the blanks of such tax receipts ready for the signature of the collector. On a page in such bound book after the tax bills or receipts there shall be appended an order directed to the sheriff or tax collector in the county in which such lands are located, which shall be in substantially the following form: State of North Carolina — County of . . . . The Sheriff or Tax Collector of . . . . County: This is to certify that the foregoing tax bills or blank receipts embrace the drainage assessments made on certain lands in the county of . . . ., which are located in and are a part of (here insert the name of the drainage district), which district was established in the county of . . . . These assessments are due on the first Monday of September, 19. . . ., and must be paid and collected within the time required by law. You will make monthly settlements of your collections with the treasurer of . . . . County, being the county in which the district was established, and in all other respects you will discharge your duties as sheriff or tax collector as required by law. In witness whereof, I have hereunto set my hand and official seal, this . . . . day of . . . ., 19. . . ..

. . . . ,
Clerk Superior Court . . . . County.

Thereupon such drainage assessments in such county shall have the force and effect of a judgment upon the lands so assessed, as in the case of State and county taxes, and shall in all other respects be as valid assessments as those levied upon lands in the county in which the district was established. The auditor for drainage districts herein authorized shall also examine the records and accounts of the sheriff of such county. In the establishment and administration of the drainage districts the clerk of the superior court, the treasurer, and the chairman of the board of drainage commissioners shall have jurisdiction over the lands and the collection of drainage assessments in the county or counties other than the county in which the district was established to the same extent as in the county where such district was established: Provided, that in those counties which do not have a county treasurer, then the auditor provided for in this Subchapter shall perform the duties required by this section for the county treasurer. (1917, c. 152, s. 11; C. S., s. 5365; 1963, c. 767, s. 4.)

Editor's Note. — Section 156-81.1, as enacted by Session Laws 1963, c. 767, s. 4, provides that all references in Subchapter III of this Chapter to "treasurer," "county treasurer" or "county auditor" are amended to refer exclusively to the treasurer appointed as provided in that section. Pursuant to § 156-81.1, the word "county" has been deleted preceding "treasurer" near the beginning of the third sentence of the last paragraph of this section. However, there was no practicable method of changing the proviso at the end of this section to give effect to § 156-81.1.

The first sentence of the second paragraph must be read in connection with the provisions of § 156-105 that "the assessments shall constitute a first and paramount lien, second only to State and county taxes upon the lands assessed for the payment of bonds and interest thereon as they become due, and shall be collected in the same manner and by the same officers as State and county taxes are collected," and when so considered, it is clear that this section is not in conflict with § 156-105, but is intended to implement collection of the assessment by the sheriff. Nesbit v. Kafer, 222 N.C. 48, 21 S.E.2d 903 (1942).

§ 156-110. Authority to collect arrears. — If any sheriff or tax collector was authorized to collect drainage assessments in any year prior to 1917, and failed to collect any part of such drainage assessments, and is now out of office, or is still holding the office of sheriff or tax collector, then and in such event such sheriff or tax collector, regardless of the expiration of his term of office, is hereby authorized and directed to proceed to the collection of such unpaid drainage assessments, and in default of payment being made, he is further authorized to make sales of such lands as may be in default at the times and in the manner authorized by law during the year 1917, 1918 or 1919. (1917, c. 152, s. 9; C. S., s. 5366.)

§ 156-111. Sheriff to make monthly settlements; penalty. — The sheriff or tax collector shall be required to make settlements with the treasurer on the first day of each month of all collections of drainage assessments for the preceding month, and to pay over to the treasurer the money so collected, for which the treasurer shall execute an appropriate receipt, to the end that the treasurer may have funds in hand to meet the payments of the interest and principal due upon the outstanding bonds as they mature. If any sheriff or tax collector shall fail to comply with the law for the collection of drainage assessments, or in making payments thereof to the treasurer as provided by law, he shall be guilty of a misdemeanor and, upon conviction, shall be subject to fine and imprisonment, in the discretion of the court, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of the bonds, to either or both of whom a right of action is given. (1911, c. 67, s. 12; 1917, c. 152, s. 9; C. S., s. 5367; 1963, c. 767, s. 4.)

§ 156-112. Duty of treasurer to make payment; penalty. — It shall be the duty of the treasurer, and without any previous order from the board of drainage commissioners, to provide and pay the installments of interest at the time and place as evidenced by the coupons attached to the bonds, and also to pay the annual installments of the principal due on the bonds at the time and place as evidenced by the bonds. The treasurer shall be guilty of a misdemeanor and subject, upon conviction, to fine and imprisonment, in the discretion of the court, if he shall willfully fail to make prompt payments of the interest and principal of the bonds, and he shall likewise be liable in a civil action for all damages which may accrue either to the board of drainage commissioners or to the holder of such bonds, to either or both of whom a right of action is hereby given. (1911, c. 67, s. 12; C. S., s. 5368; 1963, c. 767, s. 4.)

Effect of Act Abolishing Office of County Treasurer. — Chapter 46, Public-Local Laws 1917, abolishes the office of county treasurer of Robeson County and substitutes therefor a depositary and financial agent, with provision that it shall perform the duties of treasurer in disbursement of the county funds. The act further provides that the sheriff, as such, or ex officio treasurer, shall turn over all moneys of the county to such depositary. It was held that moneys derived from assessments of a drainage district, being county funds, should be deposited, as the statute directs, with the depositary lawfully designated. Commissioners of Robeson County v. Lewis, 174 N.C. 528, 94 S.E. 8 (1917). As to treasurer of drainage district, see now § 156-81.1.

§ 156-113. Fees for collection and disbursement. — The fee allowed the sheriff or tax collector for collecting the drainage tax as hereinbefore prescribed shall be two percent (2%) of the amount collected, and the fee allowed the treasurer for disbursing the revenue obtained from the sale of drainage bonds shall be one percent (1%) of the amount disbursed: Provided, that no fee shall be allowed the sheriff or tax collector or treasurer for collecting or receiving the revenue obtained from the sale of the bonds hereinbefore provided for, nor for disbursing the revenue raised or paying off such bonds; provided, that where the sheriff, tax collector or treasurer is on a salary basis, the fees herein set out shall not be charged. (1911, c. 67, s. 13; C. S., s. 5369; 1925, c. 271, s. 1; 1957, c. 562; 1963, c. 767, s. 4.)

Local Modification. — Pitt: 1925, c. 271, s. 2.

Construed with Other Sections. — The relevant sections of the various statutes upon the subject of the collection of assessments on lands in drainage districts by sheriffs and tax collectors and their compensation therefor, being in pari materia, should be construed together by the courts in ascertaining the legislative intent. Drainage Comm'rs v. Davis, 182 N.C. 140, 108 S.E. 506 (1921).

Sheriff's Compensation Restricted. — The bringing forward of s. 13, c. 67, Public Laws 1911, in this section, providing that 2 percent shall be allowed sheriffs "for collecting the drainage assessments as hereinbefore prescribed," is a legislative construction of the prior law, and was intended to restrict the compensation of the sheriff to 2 percent of the amount of the assessments in drainage districts collected by him, and not to allow him a commission of 5 percent as in case of taxes collected for general governmental purposes. Drainage Comm'rs v. Davis, 182 N.C. 140, 108 S.E. 506 (1921).

Compensation of Treasurer. — This section, dealing with the compensation to be allowed the county treasurer (now the treasurer of the drainage district) for disbursing the revenue obtained from the sale of bonds of drainage district, provides but one compensation for all services. Board of Drainage Comm'rs v. Credle, 182 N.C. 442, 109 S.E. 88 (1921).

§ 156-114. Conveyance of land; change in assessment roll; procedure. — (a) Status of Land Fixed. — The boundaries of lands as surveyed and mapped, the ownership thereof, and the classification and assessment thereof as appears in the final report and map and upon the assessment roll, shall be and remain as of the time when the district was established and the final report of the board of viewers was approved by the court. No conveyance or devise of land or devolution by inheritance after the petition has been filed or the owner thereof has been served with the original summons, either by personal service or by publication, shall affect the status or liability of such land as a part of such drainage district, except as herein provided.

(b) Conveyance before Final Report. — If the owner of any lands included in such district shall, after the filing of the petition, and after being served with the original summons and before the approval of the final report, convey the whole or any part of such lands, or the title thereto shall be otherwise changed, then and in such event the grantor and grantee or new owner, or either, may file a petition in an ancillary proceeding before the clerk of the superior court setting forth the facts, with a description of the lands conveyed either in part or the entire body of land, together with a description of the land excepted and not conveyed. If the grantor or grantee or new owner, in whole or in part, file such petition, the other not so joining shall be served with notice of same. The clerk may require the petitioner to attach to the petition a map showing the boundaries of the entire body of land as it appears in the record of the proceedings, and also showing the part conveyed. If the ownership of such land has been changed by devise or inheritance, or any joint ownership has been changed by partition, such new owner may file a petition as herein provided.

Such petition shall conclude with a prayer that the grantee or new owner be made a party to the proceeding. The court after a hearing may make the grantee or new owner a party to the drainage proceeding and shall certify to the engineer and viewers a description of the land so conveyed or held by the new owner, with directions to verify the boundaries and to classify the land to the same extent as if the grantee was the original party. Any part of such lands not so conveyed shall be and remain a part of the district.

(c) Conveyance after District Established. — After the district shall be established, the lands classified, the final report approved, and the assessment roll filed, no conveyance of any land in the district shall affect or change the existing status or liability of such land as to assessment charges or otherwise, except in the manner herein defined. When the title and ownership of any tract of land embraced in the district have been changed or vested in others by grant, devise, or inheritance, or by partition between joint owners, subsequent to the establishment of the district, the assessment roll may be amended in the following manner: The grantor and grantee, or the new owners, may file a petition with the chairman of the board of drainage commissioners alleging that the ownership of the land has changed, and the manner thereof, in whole or in part. If the whole body of land as appears in the final report or on the assessment roll has changed ownership, a general description consistent with such final report and map shall be sufficient. If the ownership of the body of land has changed only as to part thereof, the petition shall contain a description of the part thereof claimed by the new owners, and the number of acres and the classifications, or the several classes if it be in more than one class, and also a description of that part of the land the title to which remains in the original owner, with the number of acres and with the classification and the several classes if it contains more than one class of land. The petition shall so describe the land and the number of acres in each class as to that part of which the ownership has changed as to maintain the number of acres originally assessed, and the class or classes in which the same has been assessed, and the chairman of the board of drainage commissioners may require the petitioners to have the lands surveyed, and submit a map if the same shall be necessary.

(d) Duty of Chairman of Drainage Commissioners and Clerk. — The chairman of the board of drainage commissioners shall present this petition to the clerk of the superior court at any time thereafter, not later than the first Monday in July following. It shall be the duty of the clerk to examine and verify the facts set forth in the petition, and particularly to determine if the number of acres assessed and the classes thereof against the new owners added to the number of acres and the classes assessed against that part of the land, the title to which has not changed, shall equal the total number of acres and the classes so assessed as appear against such entire body of land in the final report and assessment roll. If the clerk shall be so satisfied, he shall enter an order or decree changing the original assessment roll, or the assessment roll as theretofore amended, by adding the name of the new owner with the number of acres assessed in each class, and by amending the number of acres assessed and the classes thereof against the original owner as appears on the original assessment roll or assessment roll as theretofore amended. It shall be the duty of the clerk after such order to make such changes in the assessment roll. It shall be the duty of the clerk of the superior court in making changes in the original assessment roll from time to time to observe and maintain the total number of acres in each class, to the end that the revenue produced from the annual assessment shall not be thereby diminished. The chairman of the board of drainage commissioners, instead of presenting to the clerk of the court each petition of landowners separately, may combine a number of petitions and present the same to the court at one and the same time. The first Monday in July in each year is hereby set apart as a special day on which petitions for changing the assessment roll may be submitted, at which time the clerk shall hear all petitions not theretofore submitted.

(e) Failure of Chairman of Board to Act. — If the chairman of the board of drainage commissioners shall fail to act when any petition shall be submitted to him as herein provided, or the chairman or any member of the board shall fail to discharge any duty imposed by this section or any other provision of the general drainage law, it is hereby made the duty of the clerk of the superior court, either independently or upon the request of any landowner in the district, to cite such chairman or member to appear before him upon a certain day and show cause why he should not be removed from office, and unless good cause be shown, it shall be the duty of the clerk to remove the chairman or any member of the board of drainage commissioners and to certify his action, to the end that another member may be elected according to law. If the failure of the chairman or any member of the board of drainage commissioners to discharge such duty shall be willful, he shall be guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, in the discretion of the court.

(f) When Owner May File Petition with Clerk. — If the grantor and grantee, or all those claiming to have acquired title to any body of land on the assessment roll and whose assessment will be affected, cannot agree upon joinder in a petition to the chairman of the board of drainage commissioners, or if the said chairman fails within a reasonable time to discharge his duty by presenting the petition to the court, then either party interested in the tract of land as it appears on the assessment roll may file a petition with the clerk of the superior court setting forth the facts as to the change in ownership and title of such land, with the description of the entire tract of land and the number of acres in each class, together with a description of that part of the land as to which the ownership has changed, with the number of acres in each class, and pray the court to order that the assessment roll be amended in accordance with the title and interest of the several owners. At the time of filing the petition a summons shall issue to the other parties interested in the tract of land to show cause, on a day certain, why the prayer of the petition should not be granted. Upon the return day the clerk of the court shall hear all the evidence, find the facts, and enter up a judgment directing the appropriate amendment to the assessment roll. It shall be the duty of the clerk to amend the assessment roll in accordance with his judgment.

(g) Effect of Change in Assessment Roll. — No judgment or amendment of the assessment roll shall be valid unless the number of acres and the classes assessed against the original and new owners shall equal the area and classification as contained in the tract of land as it appears on the original assessment roll. This petition may be presented to the court at any time, but the first Monday in July in each year is hereby designated as the day upon which all petitions for amendments to the assessment roll may be submitted. Any amendments to the assessment roll ordered after the last day of August in each year shall not become effective until the first day of September the following year, and the assessment roll as it appears on the first day of September of each year shall constitute the assessment roll to be delivered to the sheriff on the first Monday in September, and he shall collect the drainage assessments as they appear thereon without regard to any changes in title or ownership or any changes in the assessment roll made by the court after the thirty-first day of August. All amendments sought to be made to the assessment roll shall have reference to the assessment roll as it appears at the time the amendment is sought, which shall be either the original assessment roll or as amended; but it shall be the duty of the clerk of the superior court to examine frequently the assessment roll as amended, and before the same shall be further amended, and make certain that the aggregate number of acres in each class as appeared on the original assessment roll shall not be reduced, nor the aggregate annual assessments reduced. Any amendments ordered shall be made on the assessment roll and become due in the following September, and on all subsequent assessment rolls which have not become due or collectible.

(h) Clerk to Prepare New Assessment Rolls. — It shall be the duty of the chairman and the secretary of the board of drainage commissioners of the district to render to the clerk of the court any clerical assistance involved in changes in the assessment rolls, but the primary duty and responsibility in making such amendments shall remain with the clerk of the superior court, and he shall be held liable for any error or omission which may work a loss to the district or the bondholders. If such amendments to the assessment rolls shall make necessary the preparation of new assessment rolls, the clerk of the superior court shall be required to prepare such new assessment rolls with the clerical assistance of the chairman and secretary of the board of drainage commissioners, and such new assessment rolls shall be signed by the chairman and secretary of the board of drainage commissioners and by the clerk of the superior court before delivery to the sheriff or tax collector as required upon the original assessment rolls. The original assessment rolls shall be preserved by the clerk of the court among his records for future reference.

(i) Number of Copies. — In the event it shall be necessary to prepare new assessment rolls, the clerk shall prepare four copies, one copy for the drainage record, another for the sheriff or tax collector, another for the chairman of the board of drainage commissioners, and the other for filing and preserving among the records, and which fourth copy shall never be mutilated or interlined, but shall be preserved in its original form for reference. As to all drainage districts heretofore established, the clerk of the court shall prepare an additional copy of all the original assessment rolls for the several years the lands in such districts are assessed and securely preserve the same, at least until all outstanding bonds of the district shall be paid, to the end that they may always be accessible for reference and comparison. It shall not be necessary hereafter to deliver to the sheriff or tax collector a copy of the assessment roll for the current year in which assessments are due and payable, but the copy provided for him may remain among the records of the clerk of the court for safekeeping and reference by him.

(j) Costs Determined. — As compensation to the clerk of the court for the performance of duties imposed herein, he shall be paid such sum by the board of drainage commissioners of such drainage district as they may deem fair and adequate, and the same is hereby declared a proper charge against said district, but no additional compensation shall be paid to the clerk in those counties where he receives a salary in lieu of fees. Any costs which may accrue in amendments to the assessment rolls shall be adjudged against the parties in interest, in the discretion of the clerk, and such costs shall be paid before the amendment shall become effective. As to all petitions which shall be filed and submitted to the court on the first Monday in July, no costs shall be paid or adjudged against any party in those counties where the clerk and sheriff receive a salary in lieu of fees.

(k) Chairman Represents Board. — As to all petitions filed with the chairman of the board of drainage commissioners, or as to the discharge of any duty by the chairman required of him under the general drainage law, he shall be presumed to act for the board, and the chairman shall do all things necessary to protect and maintain the interests of the drainage district. If the chairman shall be or become a landowner in the drainage district and may desire an amendment to the assessment rolls, he may file his petition before any other member of the board, or file the same directly with the clerk of the superior court.

(l) Application of Section. — The provisions of this section shall apply to landowners in districts heretofore established and to drainage proceedings heretofore instituted to the same extent as to drainage proceedings hereafter instituted and established. (1917, c. 152, s. 4; 1919, c. 208, s. 1; C. S., s. 5370.)

§ 156-115. Warranty in deed runs to purchaser who pays assessment. — Where the land assessed by drainage commissioners under the provisions of this Article has been purchased since the making of the assessment by a purchaser for value without notice under a deed of general warranty, and said purchaser pays to the sheriff the amount of said drainage assessment, which is a lien on the land purchased, then such purchaser who pays the said drainage assessment shall have a right of action against the warrantor of his title under the covenant of general warranty contained in his deed for the recovery of the amount paid. (1919, c. 282, s. 3; C. S., s. 5371.)

Section Does Not Refer to Future Assessments. — An assessment matured and due, under the decisions, would constitute "a lien on the land purchased," but this section does not refer to future assessments not due at the time the land was purchased. Branch v. Saunders, 195 N.C. 176, 141 S.E. 583 (1928).

Consequently, liens on lands within a statutory drainage district for assessment charges for its maintenance and upkeep do not fall within a warranty or covenant against encumbrances contained in a deed until they are due and payable. Branch v. Saunders, 195 N.C. 176, 141 S.E. 583 (1928).

§ 156-116. Modification of assessments. — (a) Relevy. — Where the court has confirmed an assessment for the construction of any public levee, ditch, or drain, and such assessment has been modified by the court of superior jurisdiction, but for some unforeseen cause it cannot be collected, the board of drainage commissioners shall have power to change or modify the assessment as originally confirmed to conform to the judgment of the superior court and to cover any deficit that may have been caused by the order of court or unforeseen occurrence. The relevy shall be made for the additional sum required, in the same ratio on the lands benefited as the original assessment was made.

(b) Upon Sale of Land for Assessments. — If any person, or any number of persons, claiming to have title to any tract or tracts of land subject to assessment or drainage tax shall fail to pay any annual assessment levied against such lands, and the sheriff or tax collector shall be compelled to sell such lands under the law for the purpose of making such collection, the net proceeds of such sale shall be paid to the treasurer, to be held by him and disbursed for the purpose of paying the current assessment and future annual assessments so far as the proceeds may be sufficient. When the fund in the custody of the treasurer shall be exhausted in the payment of annual assessments against such lands, or there shall not be a sufficient sum to pay the next annual assessment, the treasurer shall immediately give written notice to that effect to the chairman of the board of drainage commissioners of the district, and also to the clerk of the superior court, whereupon the board of drainage commissioners shall institute an investigation of such tract or tracts of land to determine the market value, and if they shall find that the market value is not equal to all the future annual assessments to cover its share of installments of principal and interest on the outstanding bonds, they shall proceed, with the approval of the clerk of the superior court, to make new reassessment rolls on all the remaining lands in the district and increase the sum in sufficient sums to equal the deficit thereby created and such new assessment rolls shall constitute the future assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided in lieu of the former assessment rolls. However, the tract or tracts of land which have been so sold by the tax collector shall continue on the assessment roll in the name of the new owner, but reassessed upon the new basis, and the drainage tax collected at the same time and in the same manner as other lands as long as such lands may have sufficient market value out of which to collect the annual drainage tax, and when such lands shall cease to have such value, or shall be abandoned by the person claiming title thereto, the drainage commissioners may omit the same from the assessment roll with the approval of the clerk of the superior court, but such lands may in the same manner at any time in the future be restored to the assessment rolls.

(c) Surplus Funds. — If the funds in the hands of the treasurer at any time, arising under this section or in any other manner, shall be greater than is necessary to pay the annual installments of principal and interest, or the annual cost of maintenance of the drainage works, or both, such surplus shall be held by the treasurer for future disbursement for other purposes as herein provided or subject to the order of the board of drainage commissioners.

(d) Insufficient Funds. — If there shall be any impairment or destruction of the drainage works by any unforeseen cause or occurrence not anticipated, during the period of construction by the contractor, the contractor shall nevertheless repair and complete the works according to the contract and specifications and shall be liable therefor and also his sureties on his bond; but if the contractor shall make default and if there shall be a failure to collect all resulting damages from such contractor and the sureties upon his bond, and it shall thereby be necessary to raise a greater sum of money to complete the drainage works in accordance with the plans, or if for any other unavoidable cause it shall be necessary to raise a greater sum to complete such drainage works, the board of drainage commissioners, having first obtained the approval of the clerk of the superior court, shall prepare new assessment rolls upon all the lands in the district upon the original basis of classification of benefits and increase the same in sufficient sums to equal the deficit thereby created, and the same shall constitute the new assessment rolls until changed according to law, and shall be certified to the tax collector as herein provided.

(e) Additional Bonds Issued. — If for any of the causes hereinbefore recited in this section, or for any other cause, a sum of money greater than the proceeds of sale of the drainage bonds shall become necessary to complete the drainage system, and the board of drainage commissioners shall determine that the amount to be raised is greater than can be realized from the collection of one annual assessment upon the lands in the district without imposing an undue burden upon the lands, or if it is advisable or necessary to raise the money more expeditiously, then and under such conditions additional bonds may be issued in such aggregate sum as may be necessary.

(f) Manner of Issue. — The proceedings for the issue of such additional bonds shall be substantially as follows: The board of drainage commissioners shall file their petition with the clerk of the superior court, setting forth all the facts which require the expenditure of more money and the issue of additional bonds to complete the drainage system, which shall be accompanied by the recommendation of the drainage engineer who was one of the original viewers, or some other expert drainage engineer selected by the drainage commissioners; whereupon the court shall issue a notice to all the owners of land within the district reciting the substance of the petition and directing each to appear before the court on a day certain, not less than 20 days after the service upon all the parties, and to show cause, if any they have, why the additional bonds should not be authorized, which notice shall be served personally on each such landowner by reading the same, and by leaving a copy, and if the same cannot be personally served, then it shall be served in the manner authorized by law. Any landowner may file an answer denying any material allegation in the petition or setting forth any valid objection to same before the return day thereof.

Upon the day when the notice is returnable, or on such day as to which the same may have been continued, the court shall proceed to hear the petition and answers. If the court shall find that the allegations of the petition are true, and that the issue of additional bonds is advisable or necessary, the court shall make an appropriate order authorizing and directing the issue of such additional bonds, fixing the amount of such issue, the date of same, the time when the interest and principal shall be payable, and all other matters necessary and appropriate in the premises. Any landowner may appeal from the order of the clerk of the superior court, and on such appeal only the issues raised in the answer shall be considered, and such appeal and the further procedure thereon shall be as prescribed in special proceedings, except as modified by this Subchapter.

After the court shall have ordered the additional issue of bonds, the further procedure as to the assessment rolls, the levying and collecting of the drainage taxes, the disbursement of the revenue therefrom for the payment of such bonds and interest thereon, and all further procedure shall be the same as required for the establishment of drainage districts. The additional bonds issued shall not exceed twenty-five percent (25%) of the total amount originally issued. The additional issue of bonds shall bear six percent (6%) interest per annum and may be made payable in 10 annual installments, or in lesser number of annual installments as nearly equal as may be, as recommended by the board of drainage commissioners and approved by the court. (1909, c. 442, s. 35; 1911, c. 67, s. 15; C. S., s. 5372; 1963, c. 767, s. 4.)

Surplus Returned to Owners. — Where a drainage district of a county having assessed the property owners therein for improvements, and when having completed the same there is a surplus in the hands of the county treasurer, the board of drainage commissioners may, upon the exercise of a sound discretion, and in good faith, determine that the fund on hand is not necessary for further disbursements for the benefit of the district, according to the plan adopted, and distribute the same proportionately among those assessed in accordance with law especially when such owners have thereto agreed. Foil v. Board of Drainage Comm'rs, 192 N.C. 652, 135 S.E. 781 (1926).

The disposition of funds of a drainage district is a matter of statutory regulation in North Carolina. In re Perquimans County Drainage Dist. No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961).

Public-Local Law Must Be Followed. — Where, under the provisions of a public-local law, a drainage district may lend its money derived from its assessments until required for use in payment of the principal and interest on its bonds maturing serially for a period of 10 years, and the statute provides for a depository for these funds, the drainage commissioners may not contract with a different bank to deposit the funds there, in consideration of such bank buying at par a certain issue of such bonds that could not otherwise have been sold, except below par; nor could the transaction, contemplating a period of 10 years, be construed as a loan to the bank as authorized by the statute, and the transaction is void, regarded either as a deposit of the funds or a loan thereof. Commissioners of Robeson County v. Lewis, 174 N.C. 528, 94 S.E. 8 (1917).

Cited in Robeson County Drainage Dist. No. 4 v. Bullard, 229 N.C. 633, 50 S.E.2d 742 (1948).

§ 156-117. Subdistricts formed. — Subdistricts may be formed by owners of land in main districts theretofore established in the manner provided for the organization of main districts. Such subdistricts shall have the right to use the ditches or canals of the main districts for outlets. The formation of subdistricts shall not operate to release the lands in any subdistrict from the payment of any assessment or levy made prior to the formation of such subdistricts, nor from any assessment which may thereafter be made for the completion and maintenance of the canals in main districts, or for the payment of the principal and interest on any indebtedness incurred by the main district, nor shall it give the subdistrict any claim on the funds of such main district for its local use. It shall be the duty of the drainage commissioners of the main district to control all matters pertaining to the main district drainage. Drainage commissioners for the subdistricts shall have authority and control over all matters pertaining to drainage within their respective subdistricts, except such work as belongs exclusively to the main district. (1917, c. 152, s. 8; C. S., s. 5373.)

§§ 156-118 to 156-120: Repealed by Session Laws 1961, c. 614, s. 11.

§ 156-121. Redress to dissatisfied landowners. — Anyone owning land which has been reclassified by the board of viewers who is dissatisfied with their classification shall have the same redress as has heretofore been provided where divisions of classification have been made by a petition to the clerk or otherwise. (1923, c. 231, s. 4; C. S., s. 5373(d).)

§ 156-122. Increase to extinguish debt. — If in the opinion of the board of drainage commissioners it would help the sale of the maintenance or improvement bonds, or they would deem it necessary under the provision of G.S. 156-101, they may, with the approval of the clerk of the superior court, add to the amount estimated by the board of viewers a sufficient amount to pay off all outstanding obligations of the district, leaving this their only bond issue. (1923, c. 231, s. 5; C. S., s. 5373(e).)

§ 156-123. Proceedings as for original bond issue. — The compensation of the board of viewers and their assistants, together with all other expenses in connection with this bond issue, shall be paid in the same manner, the duties and power of the clerk, and the duties and power of the board of drainage commissioners, the bonds shall be advertised and sold, divided into such annual installments, bear such a rate of interest, the landowners shall be given the same notices and the same rights to pay cash, the contract shall be let and supervised, and contractor paid the same, as if this was the original bond issue. (1923, c. 231, s. 6; C. S., s. 5373(f).)

Cross Reference. — See note under § 156-92.

§ 156-124. No drainage assessments for original object may be levied on property when once paid in full. — Whenever any assessment has been made or may be made by any drainage district formed under the laws of the State of North Carolina upon any lands in said district, either for construction or maintenance of its system of drainage or for any other purpose, and the particular assessment made against any particular piece of property has been paid or shall be hereafter paid in full, then and in that event no other or further assessment may be made upon said land for the purpose of providing money for the purpose for which the original assessment was made. (1933, c. 504; 1935, c. 469, s. 5.)

Local Modification. — Mecklenburg: 1933, c. 504; 1935, c. 469.

This section does not apply to bonds issued prior to its effective date, or affect the right of the holders of such bonds under prescribed conditions to require the levying and collection of special assessments for the purpose of paying the bonds. Board of Comm'rs v. Gaines, 221 N.C. 324, 20 S.E.2d 377 (1942).

Assessments to Pay Judgment Rendered Prior to Effective Date. — This section is held not to affect the liability of lands within a drainage district for additional assessments necessary to pay a judgment against the district, rendered prior to the effective date of this section, for improvements theretofore made by the district. Virginia-Carolina Joint Stock Land Bank v. Watt, 207 N.C. 577, 178 S.E. 228 (1935).

§ 156-124.1: Repealed by Session Laws 1961, c. 614, s. 11.

ARTICLE 9.

Adjustment of Delinquent Assessments.

§ 156-125. Adjustment by board of commissioners authorized. — The board of commissioners of any drainage district may, in connection with the issuance of bonds for the purpose of refunding outstanding bonds of the district, and in addition to preparing a new assessment roll, for the payment of principal and interest of such refunding bonds, and when the bonds so refunded constitute all of the bonds of the district for which an assessment has been made against property therein, adjust the uncollected delinquent installments of the assessment made upon property in the district, for the payment of principal and interest of the bonds so refunded and for other purposes authorized by law before said bonds were refunded. The adjustment of such delinquent assessments may include reduction of the principal amount of the delinquent installments, not exceeding fifty per centum (50%) thereof, to which reduced installments shall be added interest computed thereon, at a rate not less than the rate of interest of the refunding bonds, from the date of delinquency of said installments to the date of the refunding bonds, and shall include any costs legally incurred for the collection of the same; the date of delinquency shall be deemed to be the first day of December following the date upon which each of said installments became due: Provided, however, all delinquent installments of such assessment shall be adjusted on the same basis and by the same method. (1935, c. 469, s. 1.)

§ 156-126. Extension of adjusted installments. — Upon adjustment of delinquent installments of any assessment as provided herein, the payment of all delinquent installments so adjusted may be extended over a period not exceeding the life of the issue of refunding bonds, but in no event over a period exceeding 20 years. Such extension shall be made by the preparation of assessment rolls, which shall provide for the payment of installments so adjusted in equal annual installments which shall become due annually on September 1, in accordance with the original assessment, and shall bear interest at the rate of four per centum (4%) per annum from December 1 following their due date until paid. Such assessment rolls shall be prepared and filed with the sheriff and the clerk of superior court and receipts shall be prepared and the same shall be collected in the same manner as other assessments of the district. (1935, c. 469, s. 2.)

§ 156-127. Special fund set up; distribution of collections. — The collection of assessments adjusted under this Article and of interest accrued under G.S. 156-126 shall be set aside in a fund and shall be applied as follows: One third of such collections may be used solely for operating and administrative expenses of the district, but the remaining two thirds thereof shall be reserved as additional security for the payment of the refunding bonds, or for the purchase and retirement of such refunding bonds, at prices not exceeding par and accrued interest. (1935, c. 469, s. 3.)

§ 156-128. Approval of adjustments by Local Government Commission. —Any adjustments of delinquent assessments under the provisions of this Article shall be effective only upon approval of the Local Government Commission. (1935, c. 469, s. 4.)

§ 156-129. Amount of assessments limited; reassessments regulated. — The assessments made under this Article shall in no instance, and against no piece of property, be greater in amount than that percent which the percent assessment authorized by this Article bears to the unpaid original assessment upon each piece or tract of property within the district. In no instance, either under this Article or any other law, shall any reassessment be made upon any piece of property for the purpose of providing money for the same purpose for which the original assessment was made, when the original assessment upon said property has been paid, or shall be paid prior to such general reassessment, nor to the extent that the original assessment has been paid. (1935, c. 469, s. 4(b).)

ARTICLE 10.

Reports of Officers.

§ 156-130. Drainage commissioners to make statements. — It shall be the duty of the commissioners of all drainage districts in the State of North Carolina organized under the provisions of the laws thereof to file with the clerk of the superior court in the county where such district is organized a monthly statement or account during the course of construction of canals for the district, showing the receipts and expenditures of all funds coming into their hands belonging to such drainage district for the period of one month prior to the day on which the same is filed, and also to post a copy of such statement or account at the courthouse door in the county. After the construction of the canals has been concluded and the drainage commissioners have only to maintain the canals, said drainage commissioners shall only be required to file and post the annual statement required in G.S. 156-131. Such statement or account shall be certified by the chairman of the board of commissioners of each drainage district and shall be attested by the secretary thereof, and a copy thereof shall be filed and kept as a part of the minutes of the district. (1917, c. 72, s. 1; C. S., s. 5374; 1927, c. 98, s. 6.)

Cross Reference. — As to this section not applying in case of special local act, see note to §156-137.

§ 156-131. Annual report. — At the end of each fiscal year the board of commissioners of all drainage districts in the State of North Carolina shall file with the clerk of the superior court in the county where the district is organized a verified itemized statement of receipts and expenditures of all funds belonging to the district during the fiscal year just closed. (1917, c. 72, s. 2; C. S., s. 5375; 1957, c. 1410, s. 2.)

Cross Reference. — As to this section not applying in case of special local act, see note to §156-137.

§ 156-132. Penalty for failure. — Any board of commissioners of any drainage district in the State, and each of the members thereof, which shall fail or refuse to file the statements or accounts, as provided in G.S. 156-130 and 156-131, shall be deemed guilty of a misdemeanor and upon conviction shall be punished in the discretion of the court. (1917, c. 72, s. 3; C. S., s. 5376; 1957, c. 1410, s. 3.)

§ 156-133. Auditor appointed; duties; compensation. — The clerk of the superior court for the county where the district was organized, shall annually appoint an intelligent and competent person of sufficient experience, as auditor for each drainage district which levies current assessments or which has accumulated funds. The same person may be auditor of more than one drainage district. The auditor shall annually report to the court as to financial affairs of the drainage district. The auditor may prepare all financial reports required by the drainage law to be made to the court by the commissioners of the drainage district. The compensation of the auditor shall be fixed by the said clerk of the superior court, and shall be paid out of the general, or operating, fund of the district. (1917, c. 152, s. 10; 1919, c. 208, s. 3; C. S., s. 5377; 1959, c. 420; 1963, c. 767, s. 11.)

§ 156-134. Duties of the auditor. — The auditor for the drainage district will be required to examine the assessment roll and the records and accounts of the sheriff or tax collector as to the assessment roll which went into his hands on the previous first Monday in September and for all previous years as to which the records and accounts of the sheriff or tax collector have not been audited.

The auditor shall for each of such years make a report as to each drainage district, showing the total amount of drainage assessments due for each year, the amount collected by the sheriff up to the fifteenth day of May of the following year, the names of the owners of land, and a brief description of the lands on which the drainage assessments have not been paid, and the total amount of unpaid drainage assessments, with any further data or information which the auditor may regard as pertinent.

If the lands in the district lie in other counties, the auditor for the county in which the district was established shall also examine the records of the sheriff or tax collector for such other counties.

The auditor shall also examine the books of the treasurer for similar years, and he shall report the amount of drainage assessments paid to the treasurer by the sheriff or tax collector for each year, and the amounts paid out by the treasurer during such years, and for what purposes paid. It shall be the duty of the sheriff and treasurer to permit the auditor to examine their official books and records and to furnish all necessary information, and to assist the auditor in the discharge of his duties.

The auditor shall make a report to the board of county commissioners on or before the first Monday in July following his appointment, and he shall deliver a duplicate of such report to the chairman of the board of drainage commissioners of each drainage district established in the county.

If the sheriff has not collected all of the drainage assessments, or has not paid over all collections to the treasurer, or if the treasurer has not made disbursements of the drainage funds as required by law, or has not in his hands the funds not so disbursed by him, it shall be the duty of the auditor to so report, and to prepare two certified copies of his report, one of which shall be delivered to the judge holding a session of superior court in the county following the first Monday in July, and a copy to the district attorney of the judicial district in which the county is located, and it shall be the duty of such district attorney to examine carefully such report and to institute such action, civil or criminal, against the sheriff or tax collector or the treasurer, as the facts contained in the report may justify, or as may be required by law. (1917, c. 152, s. 10; C. S., s. 5378; 1963, c. 767, s. 4; 1973, c. 47, s. 2; c. 108, s. 97.)

ARTICLE 11.

General Provisions.

§ 156-135. Construction of drainage law. — The provisions of this Subchapter shall be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. The collection of the assessment shall not be defeated, where the proper notices have been given, by reason of any defect in the proceedings occurring prior to the order of the court confirming the final report of the viewers; but such order or orders shall be conclusive and final that all prior proceedings were regular and according to law, unless they were appealed from. If on appeal the court shall deem it just and proper to release any person or to modify his assessment or liability, it shall in no manner affect the rights and legality of any person other than the appellant, and the failure to appeal from the order of the court within the time specified shall be a waiver of any illegality in the proceedings, and the remedies provided for in this Subchapter shall exclude all other remedies. (1909, c. 442, s. 37; C. S., s. 5379.)

Liberal Construction of Chapter. — The drainage laws apply to the whole State, and by the express provision of this section they should be liberally construed to promote the leveeing, ditching, draining, and reclamation of wet and overflowed lands. Board of Drainage Comm'rs of Parkville Drainage Dist. No. 1 v. Brett Eng'r Co., 165 N.C. 37, 80 S.E. 897 (1914).

A Necessary Provision. — This provision that the collection of assessments shall not be defeated, etc., is absolutely necessary if the public are to be protected in their purchase of the bonds put upon the market. It is to be presumed that when the court has rendered such final judgment and the bonds are issued there will be no interference with the collection of the assessments to pay the bondholders, but that all controversies were thrashed out and settled before such final judgment. Banks v. Lane, 171 N.C. 505, 88 S.E. 754 (1916).

Formation of District Not Subject to Collateral Attack. — Board of Drainage Comm'rs v. Lafayette Southside Bank, 27 F.2d 286 (4th Cir. 1928).

§ 156-135.1. Investment of surplus funds. — Any drainage district organized under the provisions of Subchapter III of Chapter 156 of the General Statutes and the governing authority of same is hereby authorized and empowered to invest any surplus funds or any funds not needed for the immediate use of the district in United States bonds or any securities or type of investment in which guardians, executors, administrators and others acting in a fiduciary capacity are authorized to make investments by virtue of Article 1 of Chapter 36 of the General Statutes as amended. (1951, c. 1058, s. 1.)

Editor's Note. — Article 1 of Chapter 36, referred to above, was repealed by Session Laws 1977, c. 502, s. 1. For present provisions covering the subject matter of the repealed article, see Article 1 of Chapter 36A.

Cited in In re Perquimans County Drainage District No. Four, 254 N.C. 155, 118 S.E.2d 431 (1961).

§ 156-136. Removal of officers. — Any engineer, viewer, superintendent of construction or other person appointed under this Chapter may be removed by the court, upon petition, for corruption, negligence of duties, or other good and satisfactory cause shown. (1909, c. 442, s. 38; C. S., s. 5380.)

§ 156-137. Local drainage laws not affected. — This Subchapter shall not repeal or change any local drainage laws already enacted. (1909, c. 442, s. 38½; C. S., s. 5381.)

Special Local Act Not Affected. — Where a special local statute for the formation and operation of a drainage district is complete in itself in all its details, a general law expressing itself applicable to all such drainage districts in the State, adding further duties and making the failure of the commissioners to file certain reports an indictable offense, will not be construed to apply unless special reference is made to the special local act. State v. Gettys, 181 N.C. 580, 107 S.E. 307 (1921).

§ 156-138. Punishment for violating law as to drainage districts. — If any person shall violate any of the provisions of law in reference to drainage districts as provided in this Chapter, or shall leave any log, brush, trash, or other thing where it is liable to wash into an adjacent stream and obstruct the flow of water or cut any tree so as to fall in a stream, or place any other obstruction in a stream in a drainage district, he shall be fined not more than fifty dollars ($50.00) or imprisoned not more than 30 days. (1905, c. 541, ss. 7, 9; Rev., s. 3378; C. S., s. 5382.)

§ 156-138.1. Acquisition and disposition of lands; lease to or from federal or State government or agency thereof. — The district may acquire such lands as may be necessary or convenient to enable it to accomplish the purposes for which the district was established. If the lands cannot be acquired by agreement as to the purchase price, then and in such event, the power of eminent domain is hereby conferred and the same may be condemned by the procedure set out in G.S. 156-67 and Article 2, Chapter 40 of the General Statutes. The land so acquired may be used in such manner and for such purposes as the commissioners of the district may deem best. If, in the opinion of the drainage commission of the district such lands should be sold, leased or rented, the board may do so, subject to the approval of the clerk of the superior court.

The commissioners of the district are hereby authorized and empowered, in their discretion, to convey or lease to the State or federal governments, or any of their agencies, with or without consideration, any properties, real or personal, belonging to said district, if in their opinion such is necessary to enable the district to receive State or federal funds available to it. The terms of such conveyance or lease shall be subject to the approval of the clerk of the superior court of the county in which the district was established.

The commissioners of the district are authorized and empowered to lease from the State or federal governments such real or personal property as may be needed by the district to enable it to efficiently operate and maintain the district for the purposes for which it was established. The terms of such lease shall be subject to the approval of the clerk of the superior court of the county in which the district was established. (1957, c. 539.)

§ 156-138.2. Meaning of "majority of resident landowners" and "owners of three fifths of land area". — Wherever in this Subchapter reference is made to a "majority of resident landowners" or "owners of three fifths of the land area," such reference shall be deemed to refer only to lands alleged in a petition or adjudged by the court to be benefited by the proposed construction work. (1959, c. 1312, s. 2.)

§ 156-138.3. Notice. — Unless specifically required by the provisions of this Subchapter, it is not necessary to give notice to any landowner of a motion made to, or order rendered by the clerk of the superior court or the judge of the superior court relating to the affairs of the district, financial or otherwise, except when an assessment is proposed to be made upon his land and then such notice shall be given as is required by the provisions of this Subchapter. This provision for notice of assessment shall not apply to assessments for annual maintenance expenses, which are provided for in this Subchapter, and specifically in Article 7A and G.S. 156-92. (1961, c. 614, s. 3.)

§ 156-138.4. Procedures to be followed in connection with drainage projects that involve channelization. — Every drainage project that involves channelization shall be subject to the procedures set forth in G.S. 139-47. (1971, c. 1138, s. 4.)

SUBCHAPTER IV. DRAINAGE BY COUNTIES.

ARTICLE 12.

Protection of Public Health.

§ 156-139. Cleaning and draining of streams, etc., under supervision of governmental agencies. — When the board of commissioners of any county subject to the provisions of this Article shall, by resolution duly adopted, find as facts: (i) that the cleaning out and draining of any portion of any nonnavigable stream, creek or swamp area in such county is necessary and/or desirable to protect and promote the health of the citizens of such county, and (ii) that the agricultural benefits which the lands along such stream or area might receive from such cleaning out and draining would be so negligible as not to justify the levying of any special assessments against such lands on account thereof, it may order, provide for, and accomplish the cleaning out and draining of such portion of such stream, creek or swamp area by, through, and under the supervision and jurisdiction of, the health department, or any sanitary committee, or any drainage commission, or other governmental agency or department of such county. (1943, c. 553, s. 1.)

Editor's Note. — For comment on this section and §§ 156-140 and 156-141, see 21 N.C.L. Rev. 352.

§ **156-140. Tax levy.** — In order to carry out and accomplish the objects and purposes of this Article, the board of commissioners of any such county may annually levy and collect a countywide tax not exceeding two cents (2¢) upon each one hundred dollars ($100.00) in value of the taxable property in such county. (1943, c. 553, s. 2.)

§ **156-141. Article applicable to certain counties only.** — This Article shall apply only to those counties which may have a population in excess of 100,000 persons. (1943, c. 553, s. 3.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

March 1, 1978

I, Rufus L. Edmisten, Attorney General of North Carolina, do hereby certify that the foregoing recompilation of the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

RUFUS L. EDMISTEN

Attorney General of North Carolina

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